

The Litchfield
Historical
Society.

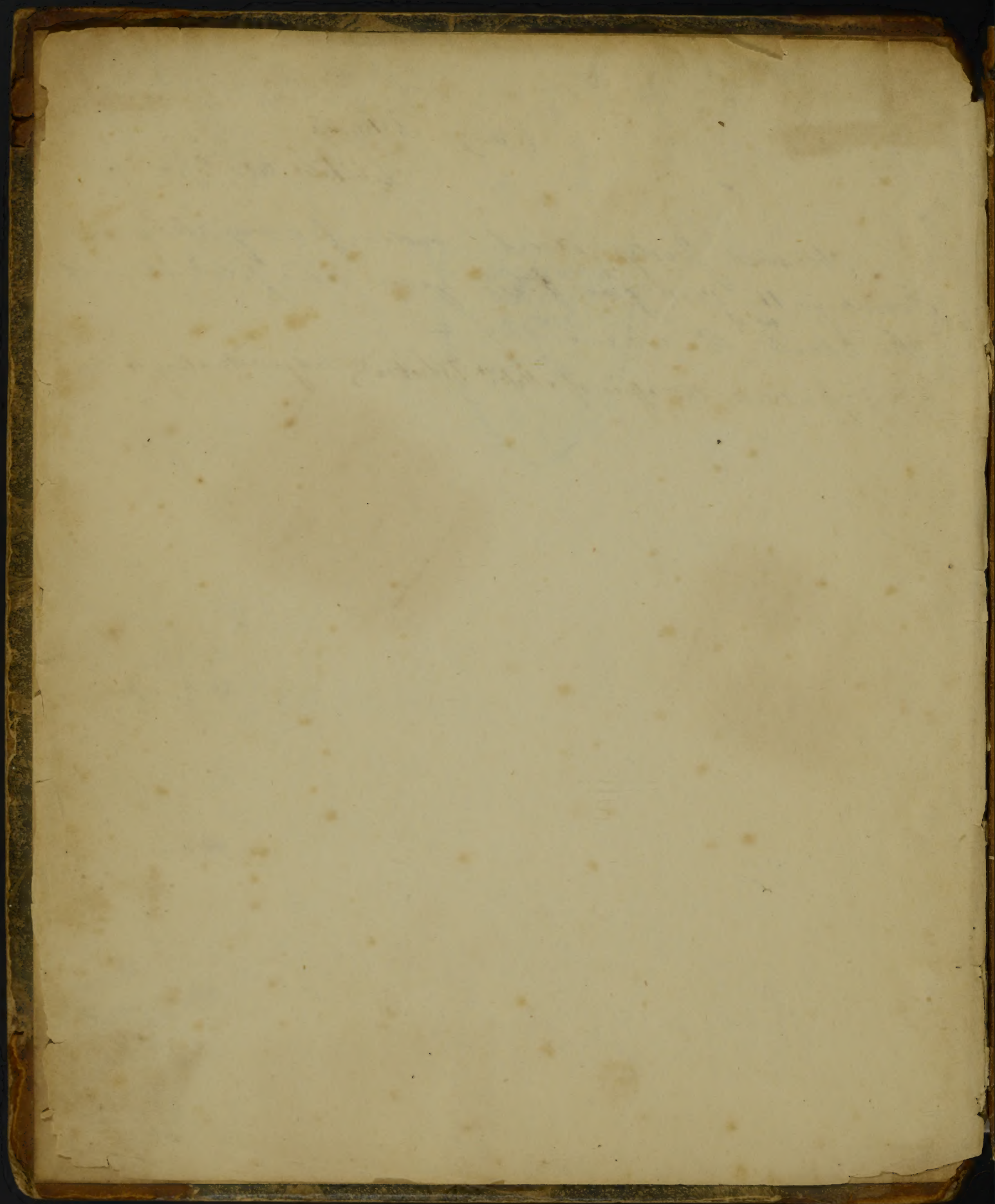
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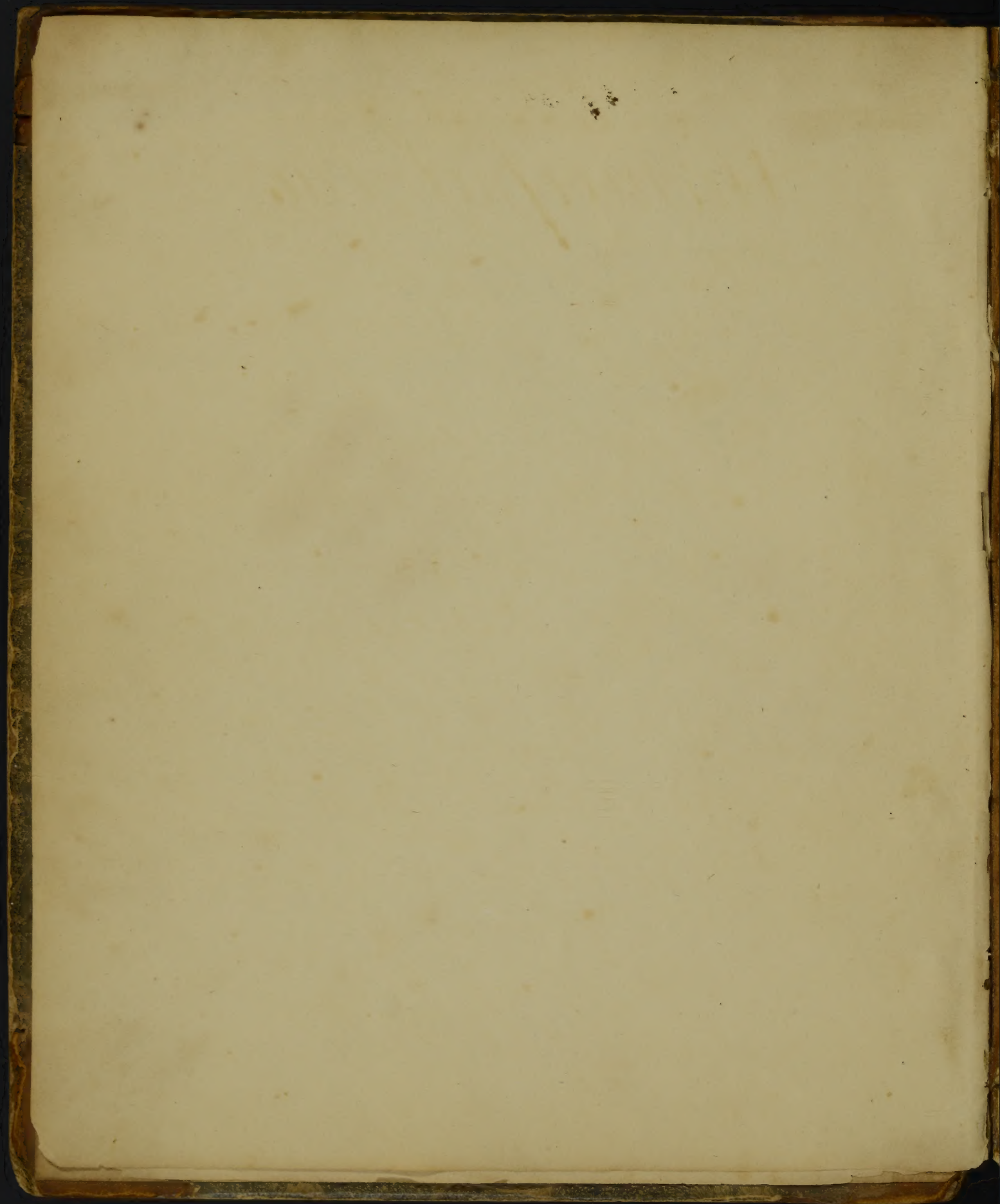
Ebenezer Baldwin

Litchfield Oct 7th 1810.

Obtained Judge Kent's order for my clerkship
February 11. 1811. for three years and filed it with
the Clerk ^{as of} the same day.

Entered the office of Messrs. Bleeker & Sedgwick May 4. 1812.





Mr. J. Gould. —

Copied

1

Municipal Law

Law in its most general sense is a rule of action. Municipal law of which I am about to treat is defined to be "a rule of civil conduct prescribed by the supreme power in a State commanding what is right and prohibiting what is wrong." 1 B. C. 444

In the first place tis a rule, tis called a rule because tis permanent, uniform, & universal. By the universality must be meant — that the rule is general and not personal within its own limits.

of Civil conduct &c — here it differs from natural law, which is binding on ration =

Municipal law

1 B. C. 45

al creatures, considered as such. Municipal law regards its subjects as members of civil society.

"Prescribed" by this is meant that it is to be made known and promulgated before it can have any effect, or binding force. A retroactive law and an Ex post facto law are distinct. A retroactive law is any law which has a retro^{spe}ctive operation. An ex post facto law has a retrospective penal operation. A retroactive law is allowed, but an Ex post facto law is prohibited and ought not ever to be made. No other than a penal law can come within the meaning of an ex post facto law.

"By the supreme power &c The legislature is the supreme power, it is the greatest

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act of superiority that can be exercised by one being over another, wherefore it is necessary to the very essence of law that it be made by the supreme power. As to the rules to be observed in the construction or interpretation of a law.

1st The words of the rule are to be understood according to their usual, known, and popular signification. Terms of art are always to be taken according to the acceptance of the learned in each art, trade, and science. And tis a general rule that if any words have a known & determinate signification at common law are used in a statute, reference must be made to the common law in the construction of that Statute.

6. Mod. 143
19. Ven. 513
4 Bac. 647.3
1 B. & 59

2nd Rule is - if words happen to be still

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dubious, the context must be consulted to establish their meaning. So where laws are made *pari materia*, they ^{must} ~~may~~ be construed with a reference to each other.

4 Bac. 645
52

Plowd. 206

D.R. 1028

1 Ver. 365

1 B. C. 60

1 Mod. 244

1 B. C. 60

The third rule is that the words of a law are to be understood with regard to the subject matter.

1 Mod. 344

4 Bac. 662

1 B. C. 61

4th Rule is. That the effects and consequences of different constructions are to be regarded.

But the last and most important rule of construction is that the reason and spirit of the law is to be considered, and when discovered is the rule of construction. From this rule results the Equity of the law which is thus defined by Grotius. "The correction of that wherein the law by reason of its universality is deficient." But by Equity of the law I conceive is meant a cor=

Plowd. 239

1 B. C. 61

1 Inst. 246

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- Direction of the law according to the reason and spirit of it. 3.3.6.131
19 June 514
526

Municipal law is divided into two kinds, the unwritten and written law or the *lex non scripta* and the *lex scripta*.

1st Of the unwritten law this includes 1st The common law properly so called, 2nd Particular customs, & 3rd Particular laws observed only in certain courts or jurisdictions.

The unwritten law is a customary law, but according to this division the unwritten law and the common law are not the same. The common law is a branch of the unwritten law only, but particular customs which is a branch of the unwritten law is not common law. 13.6.63
67

It is called unwritten law, because its original constitution is not set down in writing, there being no written original memorial of it which can be called a law, it derives all its

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13.6.64 force from custom.

13.6.67 The first branch of the unwritten law is the common law. All unwritten is customary law. The common law therefore is a law founded on long and immemorial usage, but is called a general custom, is called common because it is common to the whole Kingdom or State. The Com. law depends for its support & authority on immemorial usages. By immemorial usage is meant an universal reception.

13.6.68 It is said no custom general or particular is good, if its non existence can be proved in any part of the period between the beginning of the reign of Rich^d 1 to the present - This is the theory of law and theory only, for a great deal of common law has been made since that time. But as the original institution of the common law was not set down in writing,

23.6.91

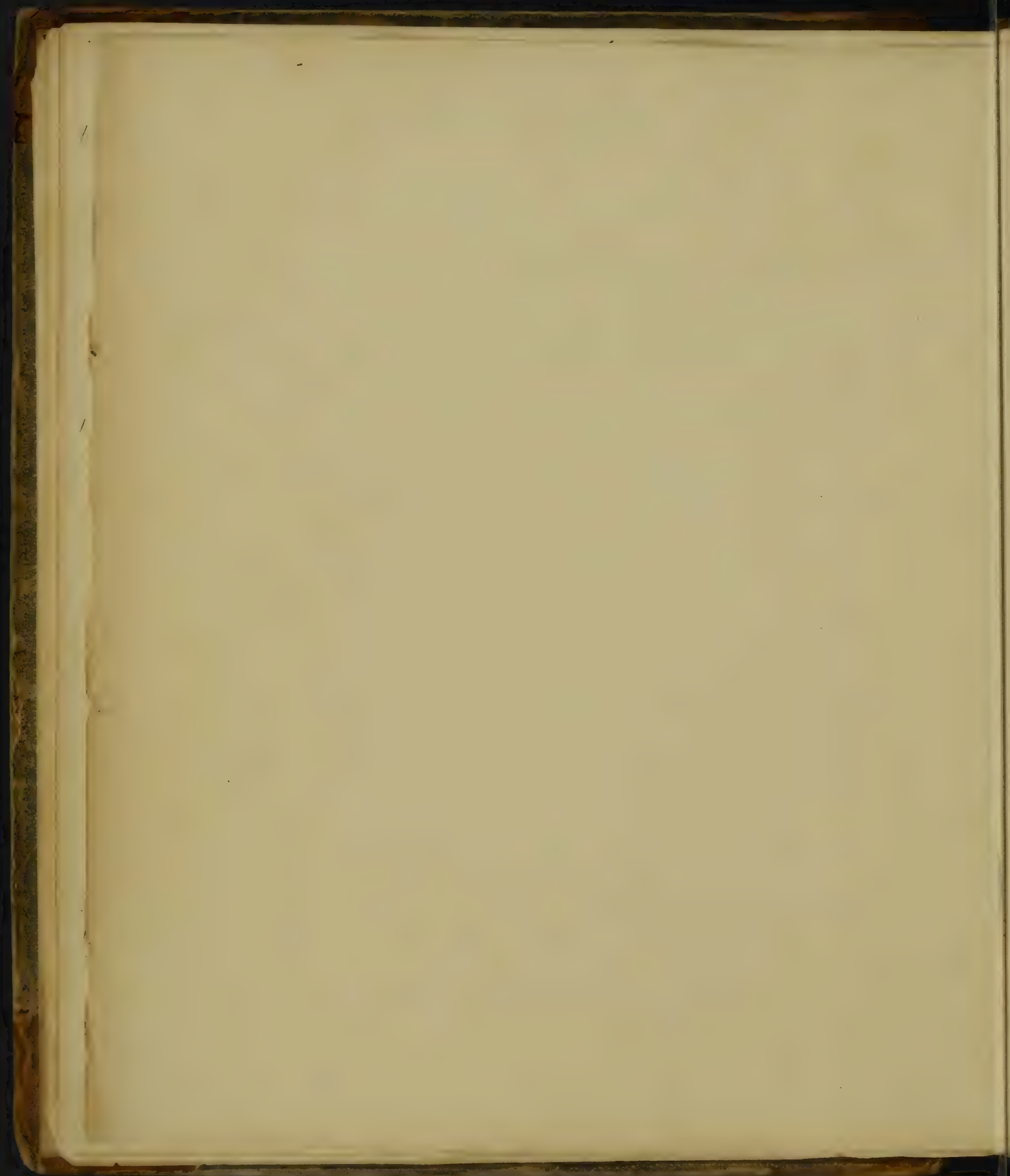
1.2.68

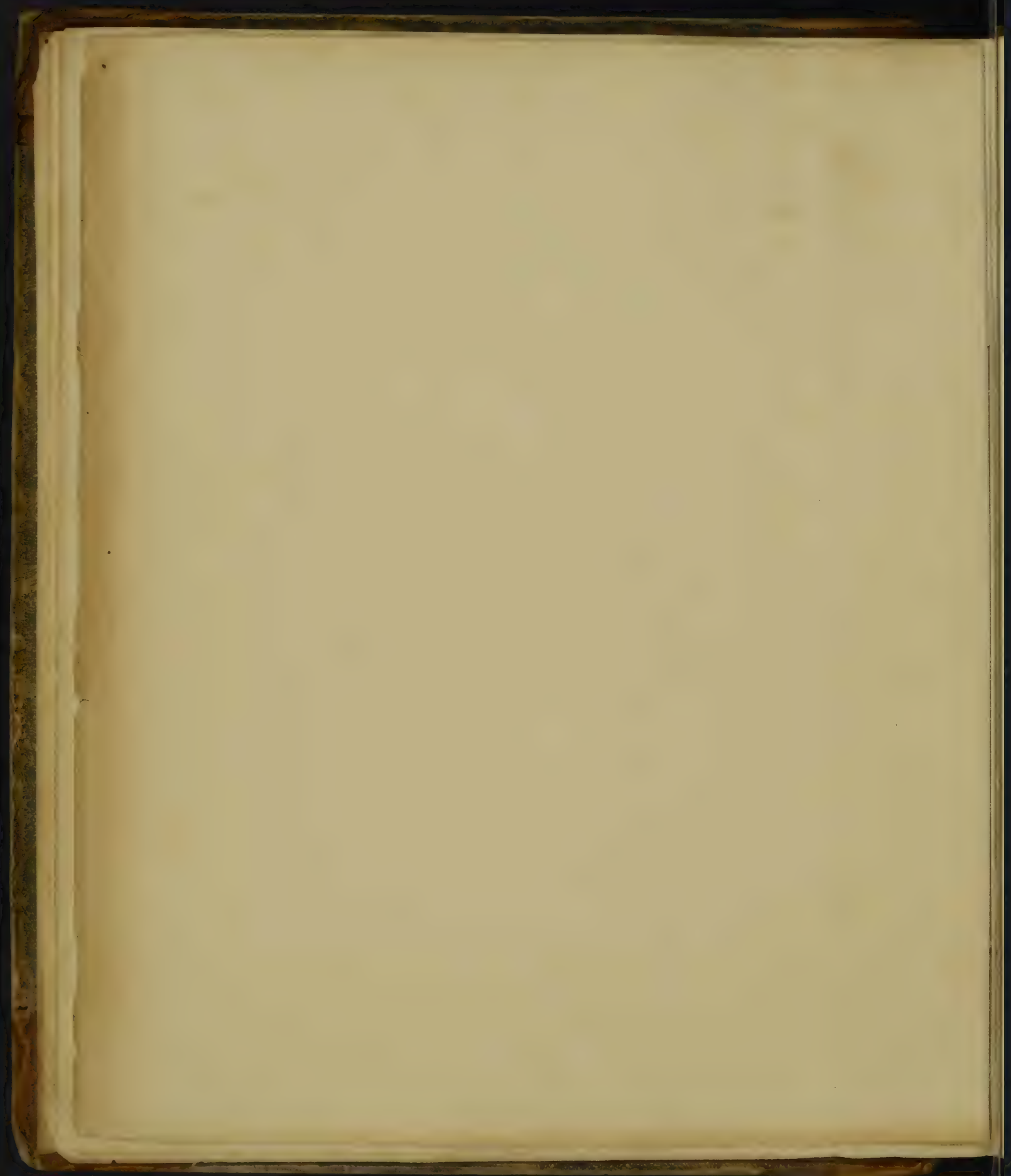
9.2.238

or 88

p. 5
Municipal Law.

Again all Statutes are either penal or remedial.
i.e. Beneficial, which is the most proper term to be used,
tho' the word remedial is here used in a different sense
from what it was at the beginning of the lecture, being
here used as contradistinguished from the word
Penal





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it may be asked, where is it to be found?
It is to be found in the records of the
several courts of justice, in books of
reports and judicial decisions, and in treat-
ises of learned men in the profession.

It is then to be found in certain written
memorials, still these memorials are
not of themselves law, but only an
evidence of it, but an act of Parliament
is *law per se*. If these memorials were
law of themselves a precedent once estab-
lished could never be departed from, but
they are very often overruled, and this is
a substantial distinction between written
and unwritten laws. Hence improper to
say this customary law is unwritten. 1 B. & C. 69

A Precedent is a former judicial ^{decision} opinion
on the point in question. Nothing short
of this can be called a precedent. The
most authentic treatises of learned men
cannot be considered as precedents. So a more.

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opinion of a judge on the bench is no precedent. These treatises however mention opinion of judges as *prima facie* evidence of what is law. As to the authority of precedents much has been said, but is now a settled rule that precedents are to be followed unless they are absurd and unjust. A precedent is not to be overthrown because the reason of it can't be discovered, he that wants to object to a precedent must himself advance reasons to show that it ought not to be ^{continued} considered as a precedent. He *onus probandi* lies on the person objecting.

1 East. 155
495

1 B. & C. 69

This customary law was actually created and built up by the courts of justice and the judges of the courts in Westminster Hall. If there is no unwritten law there can be no such thing as a regular and uniform system of jurisprudence.

If common law was created by courts of justice

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it would seem that it did not come within the definition of municipal law, of which common law is a branch, because it must be prescribed by the supreme power. But to this it may be answered that the supreme power does acquiesce in it, and when any law is sanctioned by the acquiescence of the legislature, it is sanctioned as a law.

New rules of common law are not law but evidence of what the law has been, and here decisions are evidence of immemorial custom. The second branch of municipal law consists of particular customs, the difference between this and the common law is expressed by the terms *lex loci*. A particular custom is a local usage. It is called particular, because it extends only to the inhabitants of some particular district, and this is the essential difference between common law and particular customs, so far as it respects their general nature.

municipal law

But there are several rules which relate to particular customs only, and, 1.st It is a general rule that a particular custom must be specially pleaded as matter of fact, and the existence of the custom must also be shown and then that his case comes within that custom.

Will. Inst. 265

1 Inst. 175

1 B.L. 76

As particular customs are to be specially pleaded so they are to be tried as matter of fact, and may be traversed and tried by a jury. But if the custom has before been tried and recorded in the court is not to be tried again.

11 C. 70

There are two particular customs which do not come within this rule viz. the custom of gavelkind and borough English, these need not be specially pleaded.

60 Will. 175

1 B.L. 76

As the Blackstone classifies *lex mercatoria* among particular customs, but I conceive improperly, for the law merchant is no local usage. The *lex mercatoria* governs particular transactions within the realm, but

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is not confined to local limits, is a branch of the common law.

13.6.75

That it is not a particular custom appears

1st That it does not require to be specially pleaded - *secus*, if it were a particular custom.

2nd The *lex mercatorum* is never tried by a jury, but particular customs are.

3rd It is not to be proved by witnesses, *secus* as to particular customs. And when it is

said that merchants may be examined as to the existence of customs, all that is meant

by it is, that they may inform the judge

just in the same manner as he would

consult a dictionary to find the meaning of some technical word.

2 Burr 1218

1222

86

2.175

3 B. & C. 437

2. 459

461

469

10 B. & C. 295

4 Term 208

114. 13. 28

109

As to the qualities of customs or the requisites to make a good custom, is necessary

1st That it be immemorial 2nd Continued or uninterrupted i.e. the right must be con-

tinued. 3rd It must have been peaceable or acquiesced in immemorially and 4th

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It must be a reasonable custom or rather it must not be unreasonable. 5th It must be certain i.e. intelligible not vague 6th It must be conformable. 7th Customs must be consistent with each other.

136.76

910.56

1207.11.5

It is a general rule that customs in derogation of common law are to be construed strictly i.e.

126.75

they are not to be extended by analogy or by construction. In England all customs must submit to the royal prerogative.

136.77

1207.15

I have already observed that the unwritten law consists of three kinds, the two first I have considered and now come to consider the third kind.

The third class of particular laws are those adopted by custom and used only in particular courts. These particular laws are the Civil and Canon laws. These laws are binding in England by adoption. They are not binding on account of any original intrinsic authority.

136.77

79

136.79

80

The common and Stat. Laws of England

Municipal Law

So far as they are binding in this country they derive their authority from a similar sanction i.e. by adoption and usage except where a Stat. of England is adopted by a Stat. of any of the States. It is clear that our courts ought not to reject the common law of England only in those cases where it is unjust, absurd or totally inapplicable to our country, i.e. the common law of Eng.^d is prima facie the common law of this country. The reason why this ought so to be considered is that in general it has been adopted and acted upon as our law by usage and common consent. Now it is not pretended that all the common law of Eng.^d is, or ought to be adopted in this country, for those rules which arise from the royal prerogative can't operate here from the nature of the thing. But all that is meant is that the common law of Eng.^d

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ought to be observed here, except where they are absurd, unjust or unapplicable to our situation.

It has been made a great question whether a common law distinct from that of Eng. can exist in Conn! or in other words whether we could have rules of unwritten law unknown to the Common law of Eng? The objection raised against the binding force of our judicial decisions was that they are not supported by immemorial usage. So far as the common law of Eng is not applicable to our State we are not bound to observe it, our courts are to reject it. Now it is perfectly clear that every sovereign State must have a customary law of their own, for without it there would be a failure of justice, and no rational & uniform system of jurisprudence can exist without it - It is therefore indispensable that

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we have a common law founded on a usage of our own. If we have a common law it must be without reference to the posterior rule which Eng^d has established as to the reign of Rich^d I.

Our customs are all deemed as old as our government, and as formerly in Eng^d a custom 60 years old was a good one, upon this ground we have a common law of our own, for our government is of more than 60 years standing.

The 2nd branch of municipal law is the "lex scripta" or ~~now~~ written law, by which is meant the Stat. law, or acts of Parliament. —

1 B.C. 88

S.C. 20

The ancient English Stat's are said to be binding in this country as far as their common law is i.e. that they are "prima facie" the laws of this country.

The reason why they are so considered is that our ancestors when they settled

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This country brought over as their birthright
so much of the law as was then extant.

No person contends that those Stat's are
absolutely obligatory, but that it was
right in them to have that law so far as
it was applicable to their situation.

The English books all agree as to this that
their Stat's were the laws of their Colonies.

1 person claims that modern English
Stat's have any force here, but that an-
cient Stat's are, *prima facie* the laws of this
country.

Salk. 411

666

1 S. L. 106

108

Dodd. 1. 62

2 D. M. 75

Kirby. 369

1 Tucker 31

380

It is true however that by far the greatest
portion of English Stat's have never been ad-
opted in this country. Many of their Stat's
we have adopted of course, our c'ts of justice
have adopted them, so that what in Eng^d is
written law may here be our customary law.
As to actions on the case and cost are unknown
to the common law, they are created by Eng^d
Stat's but adopted in this country of course.

All Stat. are either Public or private or
general or special.

136.85

A Public Stat. is defined to be one which
regards the whole community. A private
Stat. is one which regards private concerns
or particular persons. But the application
of this distinction is attended with frequent
difficulty, it is not an obvious distinction.
This definition is by no means a perfect
one but perhaps as good an one as can
be given.

Now most Public Stat. do regard the
whole community as Stat. of Decent, none
difficultly here. But in many cases Stat.
relating to particular and in ^{part} terms of them
to classes of men are considered as Public
Stat. The rule of discrimination seems
to be this viz. If the class of persons
to whom the Stat. relates amount to a
genus is a public one, but if it amounts
to a species is a private one. But it some-
times happens that a genus may only be
a species of a higher genus, in which case

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The rule is. If the class of persons com-
-templated by the Stat. will admit of a
-subdivisions into species tis public, but if
it admits of a subdivision into individ-
-als only, tis a private Stat.

So a Stat. made relating to all mechanics
is a public Stat. for mechanics is a class
consisting of a multitude of species. But if
the Stat. relates to all shoemakers tis a pri-
-vate one for this does not admit of a sub-
-division into species.

Again all Stat's qualifying persons to serve
as public officers are public Stat's. But if
concerning Sheriff tis a private one. -

Every Stat. in Eng^d which concerns the King
is a public one of course. Hence also a Stat.
giving a forfeiture to the King is a public

one and every Stat. which concerns the
public revenue is a public one of course.

12 Nov 249
813

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19

Stats are again divided into such as are declaratory of the common law and such as are remedial of defects in it.

A declaratory Stat is one which declares or promulgates what the common law is or has been. Hence declaratory Stats do not make laws but promulgates those which were before made.

Remedial Stats always introduce a new rule, and this is by supplying any deficiencies in the common law or abridging any superfluities in it. All remedial Stats therefore abrogate some rule.

Our Stat declaring the tenure of lands is an example of a declaratory Stat. But Stats 13.5.86 in general are remedial.

Again all Stats are either penal or remedial i.e. Beneficial, which is the most proper term to be used, tho the word remedial is here used in a different sense from what it was at the beginning of the lecture, being here used as contradistinguished from the

Municipal Law
word penal.

At H.L. inflicting a penalty or punishment of any kind is Penal. The word penalty in its most extensive signification is synonymous with the word punishment.

4 Dec. 497 But is now used in a more limited sense
refers meaning a mulct, forfeiture, or amercement.

There are certain Stat's which operate as penal Stat's but are not treated as such.

11 Stat's which give higher remedies than
Salk 212 the rules of natural justice require operate
10th 125.6 as Penal Stat's but they are not considered
8th 414 as such.

12th 126 All Stat's then which are not Penal are
36 7 Enforcing or remedial.

7th 259 Stat's allowing cost in any case are held to be Penal Stat's. Costs are not known at common law, they were first introduced by the Stat. of Gloucester in reign of Edw. 1
Salk 215 and here costs are considered as a punishment
13th 571

Municipal Law

21

Hand 357

Carth. 119
- 142

4. mod. 7.

to those who pay them.

But all the States inflicting a penalty of any kind are penal States yet it does not follow that a prosecution to recover this penalty is a penal action; for an action brought by an individual to recover a penalty in his own right is a civil action. The Stat. is ~~civil~~ penal but the action is civil.

Debt is the appropriate action to recover a penalty. The form of the action is to determine whether it is a civil or penal action.

This distinction is very important, for a penal action is not within the Stat. of Jeofails, so the declaration cannot be amended, while civil actions are. So also no testimony but such as is under oath will be admitted in a penal action, so the affirmation of a Quaker is inadmissible, or, in civil actions.

17th. 125

Comp. 352

4 J. R. 753

7 de 1257

States are lastly divided into affirmative and

Municipal Law

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negative Statutes. Affirmative Stat's are those which are couched in affirmative terms; and negative Stat's those couched in negative terms. This distinction is important.

1 B. & C. 39

4 B. & C. 641

only as it regards the construction of affirmative and negative Stat's.

These are the divisions of Statute Law.

Every Stat. in Eng^d commences its operation from the first day of that session of Parliament in which it was enacted unless some particular time is appointed for it to commence. Hence many Stat's have a retro-active operation. But it is now usual to ap-

Robt. 111

222

309

Doyle 371

point a time when the Stat. shall begin to operate. From this rule it follows that if two affirmative Stat's are made on the same subject and during the session of Parliament, neither of them has priority and hence if there are two Stat's so repugnant

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to each other that neither can stand each will
repeal the other, tho this is denied in some
Reports still tis law.

This rule however presupposes that no time
is appointed for the Stat. to take effect.

4 Bac 336
6.

19 June 1720

6 Nov 1787

This rule of Eng^l law has always been ex-
-plained in Court. Stats here shall not take
effect till a reasonable time has elapsed
after their creation.

And the rule of law now is that no Statute
shall have effect till the close of that ses-
-sion of the Legislature in which it was
enacted, and not till the Representatives
have time to arrive home. This is a general
rule, and will not apply to individuals.

I will now treat of the construction of Stat. law.

The object of construing Stats is to ascertain
the will of the law maker. Hence the rules to
be observed in the construction of them are
such as are entitled intended to assist the

Municipal Law

the mind in ascertaining what the will of the Lawmaker was.

to 7.6

19.6.87

In the construction of Stat's which are not penal—three points are to be considered viz the old law—the mischief—and the remedy. The particular rules of construction I have already given you, and all those rules are to be observed in all Stat. Laws. But the these rules are to be observed, yet penal Stat's are to be construed strictly, i.e. according to the letter of them, this rule is not well expressed nor well explained. It operates on one side only. Now the meaning of the rule is that penal Stat's are to be construed strictly as against the prisoner and liberally for him. The rule then is in favour of the Subject altogether i.e. no person shall be adjudged as guilty under a penal Stat unless he is within the letter of it, however strictly he may be within

The reason and spirit of it. So if he is not within the letter you cannot bring him within it and on the other hand the a party is within the letter of the law he shall not be brought within the penalty of it unless he is within the reason and spirit of it. So the rule amounts to this that a judge may resort to the reason and spirit of a law to take a party out of its penalty, but cannot resort to the reason and spirit to bring him within the penalty.

1 Ward. K
5.3
61
116
131
138
Howe 17
465
Leach 176
107
295
233
310
387
4 Bac. 667
17 W. 168
1 Hale 524
570
635
1 Root. 52
163

The rule of strict construction of penal Stat^s against Prisoners is not uniformly observed.

Thus, by Stat. of Eng. 1st killing Master is made petit treason and the killing of husband by the wife is not mentioned yet it is included. So in one or two other cases.

Howe 38

But the intention of the Legislature should in all cases I think be carried into effect in criminal as well as in civil cases.

4 T. R. 3

Penal Laws of one country cannot be

Municipal Law

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taken notice of in another, so as to affect subjects to the laws of the latter. Penal laws are local, not transitory.

1 Hen. 8. 123

7 J. R. 433

Ridg. 79

80

Courts of one sovereign State cannot even notice the penal laws of another - nor of civil laws.

Roobing 38

79

80

But the penal laws of every country extend thro the jurisdiction of that country, and are the rules to all persons within those limits - whether a foreigner or not.

When a penalty is repeatedly incurred by the continuance of the offence, as in continuing a nuisance, one penalty only can be sued for at a time. Indeed I suppose the court would say no penalty should be recovered except for one offence which was committed before one conviction, *ut supra*.

1 Root 52

Beneficial or remedial Statutes are to be construed liberally - so the latter may be enlarged or restrained in order to obtain the intention of the Legislature, so as to include

Municipal law.

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cases not within the letter and take out those that are within the letter. A law relating only to Executors in terms, includes the case of administrators where the reason is the same. So again the Stat. of Henry the eighth authorized all persons to de-
-rise, yet by construction Infants, Lunatics, and others were excluded.

141
Dyer 354

yet is settled that a Stat. taking away Com.^l law remedy is to be construed strictly - So Stat. of Limitation taking away Com. law remedy's are to be strictly construed. And in Com.^l where power is concurrent with the Stat. the Court holds it not to be within the Stat. of limitations - the the same reason exists.

10 mod. 282

The words of an explanatory Stat are never to be construed so as to extend the meaning beyond the letter. Otherwise there would be no end to the constructions. E.g. Stat. 34 Hen. 8.th for the construction itself might be construed liberally, and so on in infinitum.

Qu. 11. 596
Tabk 534

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Stat. partly Penal and partly beneficial are to be construed strictly in part and liberally in part - i.e. liberally, where it operates in the offence and strictly, when it operates against the person. & the Stat. against fraud which are generally penal - here where the Stat. acts upon the Offender and inflicts a punishment the construction is strict, but where the Stat. acts upon the offence by setting aside the fraudulent transaction the construction is liberal.

136. 58

30. 52

110. 47

1647^a

The different parts of a Stat. are so to be construed that if possible the whole may stand. Repeal by implication is not favored. But if there is a saving or proviso totally repugnant to the body of the Stat. the saving or proviso is void and the enacting part stands. E.g. Stat. vesting the lands of A in the King saving the right of A.

1647

136. 89

19. 511

6. 287

1. 111
116

If two Stat. are repugnant to each other the latter in point of date repeals the former. So if the latter part of the same

So if the latter part of the same Stat. is repugnant to the former part so that they cannot be reconciled the latter repeals the former, in proportion to the repugnancy, this is different from the case of saving. *supra*. 11 G. 63
 This may proceed from mistake, the former 4 Bac 38
 cannot be accounted for from inadvertence.

When the common law and the Stat are at variance or differ the Common Law always yields.

The Reason is the Stat is most recent, since the time of making it can be ascertained.

Decus as to the com. law, which is immemorial.

Indeed Stat law is deemed of higher authority 4 Bac 638
 641

Every Stat in its nature is repealable, for if not so there could be no continuance of sovereign power. The legislature must be sovereign if any -- Repealing is an act of the

Legislature -- of course a clause in a Statute

that it shall never be repealed is void. 4 Bac. 638
 1 B. C. 90

It is in derogation of the powers of subsequent legislatures.

The law never favours the repeal

municipal law

11 Co. 63
10 mod. 118

of a former Stat. by implication. This implication arises from repugnancy or inconsistency.

4 Bac. 641
10 mod. 337
4 Burr. 2026
1 Inst. 111
115

Bro. Par. Pleas
70

It is said that affirmative Stats do not abrogate the common law. I think this is incorrect, for frequently such Stats may imply a negative of common law i.e. may be inconsistent with it. E.g. com. law rule is that notice to Deft. be six days. Stat. is that it be twelve - & yet in suppose penal Stat. inflict a lower penalty than com. law, it repeals it of course.

2 Burr. 503
805

Affirmative Stats sometimes give a cumulative remedy, and then it does not abrogate the common law. E.g. Stat. gives double damages in certain trespasses - still the injured party may sue as at common law.

2 Warr. 30

Again it is said that an affirmative Stat. don't repeal an affirmative Stat. This I think is an incorrect and absurd rule, for one does repeal the other if inconsistent.

1 B. C. 89

with it.

If a Stat inflicts a higher or lower punishment for a given offence than a former Stat. the former is repealed. no cumulative remedy here as in case of a Stat. inflicting a higher penalty than at com. law - reason of the distinction is that all the Stat law on the same subject is deemed one law, recuss of Stat and com. law where the Stat inflicts a lower punishment than at com. law.

4 Bac. 654

4 Burr. 2026

Leach 752

4 Bac 654

Whenever a repealing Stat is itself repealed the Stat. first repealed is revived.

1 B. C. 90

If a Stat. is repealed by 3 different Stats and two of the last are repealed still the first stands repealed. And if a Stat. which has been repealed by another is revived by another Stat. the last reviving act repeals the repealing Stat.

2 Inst. 686

4 Bac 638

This is a rule when a Stat is repealed that all acts done during the continuance of that Stat. or under it are valid. But - is whenever a Stat. is declared null all acts done under it

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ask. 243
13th 38 - are valid void, but this seems to me contra-
ry to the first principles of jurisprudence.
It a Stat is repealed by another Stat
which makes provision on the same subject,
which provision is limited, and expires at a
5 Inst. 265 limited time, yet the former Stat does not
revive.

I have already observed that as a general
rule no law can have a retroactive operation,
yet Stat do sometimes have such an operation.
It follows then if a Stat. having been vio-
lated and before judgment against the
offender, it is repealed and a new Stat is
made on the same subject, the offender can-
not be punished neither can he if no new
Stat is made. He can't be punished under
the old law for there is no law to authorize
the judges to pass sentence and he can't pun-
ish the new Stat for this was not in existence
at the time that the offence was committed.
I may now say as the case may happen be
punished at common law.

1 Inst. 169

1 Br. 347

1 Inst. 59

Municipal Law.

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This doctrine was recognized by the Circuit Court of the U. States in the case of U. States vs. Sundwell.

I have already observed as to retroactive laws. Still it is to be observed that if one covenants to do an act which may at time of covenanting be lawfully done, but is afterwards made unlawful by a Stat, the covenant is annulled. So if a person

Salk 198

to Reg. 1352

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Annals of the
gation of contracts shall not be impaired by
Statute, for by that Stat is meant that
no Stat in the terms of it shall impair
contracts.

11th 45
If one covenants not to do an unlawful
act and a Stat afterwards makes that
act lawful, the covenant is not annu-
lled. In the two former cases the covenant
is opposed to the Stat but in the last
case a performance of the covenant
is not inconsistent with law.

14th 65
or 165
If a contract declared illegal by Stat
is made while the Stat is in force a sub-
sequent repealing Stat will not make the
contract good; the contract can never be
enforced. But where the complete perform-
ance is made illegal by Stat yet a partial
may be made consistently with subsequent
Stat if the party requests it, and this
partial performance may be enforced by
a court of Chan,³ and I believe in

14th 200
— 189
— 211
7th 163
95

in some cases by a court of Law. This con- ^{3 Bro P Cases}
 tract however must be made before the ³⁸⁹
 prohibiting Statute. The rule is the same ^{2 Term 254}
 where a complete performance is made impos- ^{1 Howl. 31 or}
 sible by the act of God. So if it covenants to ^{— 781}
 convey to B two houses and one is burnt ^{More 254}
 by lightning, still he shall be bound to con- ^{1 Howl. 148}
 vey the remaining one.

It is said that acquiring what is impossible ^{1 B. & C. 91}
 are of no validity. And his said Statute
 contrary to the Law of God are void. This
 principle is admitted in one part of Black-
 stones Commentaries, but denied in another
 part. I conceive it to be a position which
 cannot be supported. It is clear that the ^{5 To. 118}
 Judges are bound to follow and enforce laws ^{1 Fort. 23}
 which may be contrary to the laws of God. ^{1 B. & C. 41}
^{— 91}

But the question whether legislative acts
 contrary to the constitution are void is
 entirely a different one, and is now clearly ^{2 Federalist}
 settled in U. States that they are void. The ^{75.}
 object of the constitution is to restrain Legis- ^{193.}
 = Tucker
 notes on B. 91

Municipal Law

Sta. 431

59 R. 598

2 Warr. 268

874

Latent jurisdiction. It is so when a Statute enables a court to do a matter of justice to a party, the court is bound to do it.

If a Statute makes a new law concerning an old offence and constitutes a new Court to execute that law, still the jurisdiction of the ordinary court of criminal jurisdiction is not ousted.

1 Warr. 8.9

114

9 Co. 118

1 Warr. 579

2 Burr. 1642

If a Statute enacts that all crimes of a certain description shall be tried by certain particular Judges, the rule is the same. Because the jurisdiction of a court is not to be ousted by implication.

But if a Statute creates a new offence and also creates a new jurisdiction for the trial of it, the court of ordinary criminal jurisdiction is excluded. The authorities are not agreed upon this point, however I think clear that

1 Warr. 9

2 Warr. 5

6 Co. 143

1 Warr. 302

8 Co. 574

the court of Kings bench would be excluded.

If a special authority is given by Statute to certain persons affecting the property of individuals, that authority must be strictly pursued, and it must appear upon the

fact of the proceedings to have been strictly pursued seems, to be not valid.

low. 26

When a Stat enables a certain number of men to transact business by a vote of the majority, and constitutes a certain number of them a quorum, it is a question whether a majority of the quorum can bind the whole body.

The better opinion however is that a majority of the quorum is not binding. These bodies have no power but such as is expressly given them or such as is inseparably incident to them.

11. Co. 30

Foot 211

39. R. 394

4 30 810

822

It seems that a private authority created by Stat and conferred upon two or more persons is joint and not several unless it is otherwise expressed.

But it is said if a power of a public nature is given to several the act of a majority, (the whole number being present) will bind.

1 Br 3229

336

2 Br 1017

39. R. 392

But the rule does not affect corporations, for when a corporation is created a majority of those present can act for the whole.

Municipal Law

2. Alf. 202
119.
1 Bos. P. 236
107

The individuals who compose it are not regarded - It is an ideal entity.

There is a very material rule laid down as to the construction of the word void - a void and a voidable act are very different.

A void act is a mere nullity ab initio. A voidable act stands good till the act is set aside by due course of law - a void act can never be ratified, a voidable one can - a void act can be taken advantage of by any person - but a voidable act can be taken advantage of only by the party or his privy. The rule as to the construction of these words is - If the object of the Legislature can be obtained by construing the word void to be the same as voidable

then the word is construed as if it were voidable. But if the object of the Legislature cannot be effected by construing the word void to be the same as voidable, then the word void will have its strict construction.

The rules of the construction of

1 Inst. 43
3 Co. 60
6 Co. 127
13 Co. 87
2 J. R. 605
7 Co. 210

Statutes are the same in Cts of Equity, as in Courts of Com. Law; but the mode of enforcing the law is in many cases different; and I would here observe that the rule of construction is the same in Contract, except in Penal bonds and mortgages.

3 B. 6. 430

- 188

1 Inst. 22

Dong 264

Pleading Statutes and the Mode of Prosecuting upon them.

Merely to plead a Stat nothing more is necessary, than to show that the facts came within the Statute. E.g. Stat. of limitations, nothing more is necessary than to plead "aump sit non in a sex annos."

3 Le. Ry. 11
221

Counting upon a Stat is a different thing from pleading a Statute. Counting upon a Stat consists merely in an express reference to it, as, "against the form of the Stat. in such case provided" or "by virtue of the Stat. in such case provided."

Reciting a Stat is to quote its contents. To plead a Statute, to count upon it, and to recite

Municipal Law.

its contents are different things but often con-
founded.

In a general rule that Judges are bound
to take notice ex officio of Public Statutes
but Judges can take no judicial notice of
private Statutes unless they are set for the

4 Co. 46

10 Co. 97

1 Co. 8236

1 Bac. 384m
38

The rule is the same respecting a private
Stat as bonds or other private contracts.

Stat. Com. 342

In Court under our rule of pleading the
Def^t may give in Evidence under the gen. issue
any private Statute. But here he must
read the Stat. as he would a private docu-
ment. But here as well as in Eng^d the
Plff if he brings his action on it must set
it out as deeds &c -

4 Co. 46

10 Co. 97

1 Bac. 38

et public Stat when required to be p^loed
or counted upon, need not be recited.

Stat. Com. 344.5

or 345

Stat. Com. 346

176

422m

342

How. 1174m

4 Bac. 63

It is said that it is not necessary to recite a
public Stat, yet a misrecital will be fatal,
provided the misrecital is in a material
fact. But the rule laid down by Hobart

is, that a misrecital is not fatal unless he does confine himself to it, or tie himself up to it; - 12 D.R. 382
 but if he does not confine himself to it a misrecital is not fatal. 2 Mod 241
 1 Sid. 336
 2 MS. Kelly 516
 — 517

After verdict a misrecital of a private Stat is not cause of error, for the pleadings appear good on the face of them.

If the Stat is misrecited, advantage may be taken by pleading "not tied record" 12 D.R. 382
 or he may take advantage by praying 5 Mod 241
 over of it; shew the misrecital and demur. 1 Sid. 336
 2 MS. Kelly = 517
 In this respect a private Stat is tried like a deed.

Is a general rule that a public Stat need not be pleaded, but this is not universally true.

A public Stat in Eng^d when it is to be used to defeat a specialty must be pleaded. If 5 Co 59^b
 to debt on bond, the Def^t would defeat the 119^a
 specialty, he must plead it, but need not 12
 recite it. But to defeat a simple contract 3 talk 311
 he need not plead it. — 309

one who would found his action on a

Municipal Law

public Stat. must plead it, for the Plff must state the particular grounds of his claim. but he need not recite the public Statute. He who declares upon or otherwise pleads a Stat, when tis necessary also to recite it, need not recite verbatim, for a recital of the substance of it is sufficient. But it is never necessary to recite the title or preamble of any Stat. Mr. Gould has known of several instances where a misrecital of the title of the Stat has proved fatal.

But it was once holden that a misrecital of the title of a Public Stat is not fatal; but modern cases say it is. But this I conceive ought to be taken subject to the rules already given.

When tis necessary to recite a Stat the party must give the date and the place where it was made.

When a private Statute is pleaded the other may plead "not his record" for the question whether

4 Co. 76

2 mod. 57

Hot. 227

3 Co. 33

4 Bac. 655

656

2 Dall. 77

Hard. 324

2 mod. 62

4 Bac. 657

2 Hard. 256

200 J. 211

Bur. 6. 232

Leach. 174

There is such a Stat is a question of fact, & to be tried by the jury - But "und tied record" can never be pleaded to a public Stat for this is not a matter of fact, and it cannot be tried by the jury, but the court are to determine whether there is such a Stat. or not. —

8 Co 28
Cro 835
2 And 57
4 Co 76

In declaring upon public Statutes the Plff must plead them, but is not necessary to count upon them - To plead a Stat is nothing more than to state the facts which come within the Stat.

19 Vin 503
1 Bac 38
Cro. E. 60
Garth 382

To this rule there are three exceptions -
1st If the party has a remedy both at common law and upon the Stat. he who would found his actions upon the Stat must count upon it, otherwise it will not be known

1 Comm 584

that he intends to found his action upon the Statute. There are many cases of this kind,

Latib 584

4 Bac 18

contra.

Bacon is his title of leading lays down the contrary rule.

2 Hawk 37

2nd To in actions founded upon penal

Municipal Law

2 Mass. 436 Stat. the Off must count upon the Stat.
19. 521 The reason of this rule is unknown to
2 East 333 all Courts - the then way one exists.

3d If a public Stat gives a new form
of action unknown to the common law is
necessary to count upon the Stat if he would
436 686
19. 504
1 East 384
16. 545
bring his claim upon it. This is the case when
a new species of action is given.

1 Com. 250 But where a Stat extends an old remedy
19. 503 or action to a new case is not necessary
1 Bac. 449 to count upon it.
Dyer 23
85

* In actions upon public Stats which are
remedial or beneficial, the general rule
is that it is not necessary to count upon
6. 382
16. 211
them.

If one Stat prohibits an act and another
Stat inflicts a penalty for its violation, it is
101
2 East 333 necessary to count upon both.

When there is an offence against the common
law, and also against the Stat, you may in
one indictment lay the offence and com. law

and also upon the Stat, but this must be done in two counts.

There are many cases where there is an offence at Common Law which is also made an offence by Statute.

Leach 235

If a temporary Stat has expired, and is continued by a subsequent one, the counting upon the former Stat is sufficient.

11th. 1066

If the words "against the form of the Stat." are inserted in an indictment for an offence at Common Law, and not by Stat, such words will not vitiate the plea; they are considered mere surplusages.

12 R 152

8 do 362

If a contract good at Common Law by Parol is by Stat required to be in writing, still it is not necessary to declare that it is in writing; the evidence may show that the contract is in writing. Such a Stat introduces a new mode of evidence, and no new mode of Pleading. But if such a contract is pleaded in fact in an action, it is said to be necessary to aver

12 mod 540

Bul N 279

3. 3 mod 1940

3 av 480-5

10th 28

Municipal law

that is in writing. But if writing is necessary to the validity of a contract at com. law it is necessary in the pleading to aver the contract to be in writing.

But when a Stat makes writing necessary to the validity of a contract which contract is unknown to the common law, such a contract must be declared to be in writing - as the case of devise of lands.

In pleading that the exceptions in the operative clause of a Stat must be negatived by the prosecution. But an exception in a separate clause need not be negatived by him who prosecutes. For the Dff may do this by way of defence. For exceptions in the operative clause go to the description of the claim, or right created, but exceptions in a separate substantive clause, do not go to the description of the claim or right.

Where there are two subsisting remedies one by common law, and one by Stat, either of them may be pursued.

In cases of this kind if the Dff chooses

2 to b 376

Wh. 307

Crab. 279

383

Crab. 279

383

6 B 38 a. b

2 Mee 540

4 Bae. 656

talk 519

17. 2 411

144

1 Bae. 153

Gray 331

6 Term 859

59

1 East 646

2 T. R. 83

2 Wh. 302

Crab. 235

2 Bae. 499

talk 115

Crab. 549

8

The Stat remedy, and cannot support himself, he may in the same suit recover upon the com. law rate or remedy.

¶ That which is not offence at Com. Law is made illegal by Stat and a particular mode of prosecuting it is pointed out by Stat, that mode must be pursued and no other will answer. But this rule holds only in two classes of cases 1st When the particular mode is prescribed in the prohibitory or enacting clause, so that the mode is incorporated with it. 2^d When there is no prohibitory clause but the Stat says whoever does thus or thus, shall be punished so and so. There is no offence created by the terms of the Statute.

But when this mode of prosecuting is prescribed by in a separate substantive clause the rule does not hold and this is generally the case. But if that which is prohibited by Stat was also prohibited by common law and the Stat prescribes a new mode of prosecuting, still the mode of prosecuting at common law is not excluded. The Stat is only an

2 Bl 290
2 R 302
3 R 356
5 R 59
contra
1 Cr 231 387
- 697
5 Co 99

8 R 644.6
1 R 118.5
7 Co 865
2 Bl 805
4 Bl 2323

1 Bl 544
2 R 302
in note
4 R 205

2 R 505
3 R 541
4 R 202
7 R 5

Municipal Law

29 Mod. 302

13 Br. 244

19 Vin. 519

518

3 Lev. 290

Long 495

10 Co. 75.7

4 Bac. 53

6 mod. 26.

remedial remedy. If a Stat creates
a right or an offence also gives no remedy.
The common law will furnish a remedy.

To obstruct the execution of powers granted
by Stat is an offence at common law and the
indictment need not and ought not to
conclude "contra formam Statui."

Who may prosecute on Penal Statutes?

The criminal can ever be pros-
ecuted by an individual in his private
right or capacity, for the public is the
party injured and the remedy belongs
to the public. But the Stat law may en-
able an individual to prosecute for an
offence done to the public, but this is for
the King. This practice has never been at-
tended in Council.

In Eng^d an individual can prosecute
by information even in Treasons.

A qui tam action is an action of prose-
cution in *qui tam*. It is brought
partly for the King and partly for the individual.

2 Hawk 265

1 R. 2

Lev. 229

112.25

193.250

242

811.33.42

190.148

2 Hawk 264

311.77

186.6.162

4 303

et qui tam information is carried on like a criminal case - Qui tam action is like a civil case. Qui tam actions are almost universally founded on penal Statutes. They are now considered as mere creatures of the penal Statutes.

et Populare action is one given to any person who will sue for the penalty incurred by a breach of the Statute: et qui tam action is not necessarily a popular action nor vice versa. A right to prosecute qui tam is frequently given to the party injured only. If the whole penalty is given to the party who will sue for the injury, it is popular but not qui tam. It however, or Stat, pro hibitis or commands a thing for the benefit of an individual he may have a remedy by an action founded on the Stat.

If an individual is civilly injured by an offence prohibited by a Stat, he may have his civil action on the Statute.

When a Statute inflicts a penalty for

Municipal Law

In diffusing, any one of his right, but the
not appropriate the penalty, the penalty
belongs to the party injured and not to the
King.

If for an offence immediately injurious
to the public only, a Stat gives a penalty at
least of it to him who will prosecute for it,
any person may prosecute qui tam; as where

the Stat prohibits the exportation of wool, this
does no injury to the individual, not any
person may prosecute qui tam.

Where the offence is immediately injurious
to the public only, no individual can prose-
cute qui tam unless the penalty or part of
it is given to the prosecutor.

If a Stat prohibits an offence immediately
injurious to an individual, he may have a
qui tam action. But the Stat does not express-
ly give the party the penalty or any part
of it, or the it does not provide that he
shall recover his own damages. This rule is
not very well settled, the C. J. Gould thinks
his law.

1 Inst. 149
3 Inst. 200
198

11 Co. 11. 113
3 Co. 37

Dyer 95
1 Co. 11. 113
2 Inst. 200

11 Co. 11. 113
2 Inst. 200

2 Inst. 200
13 Co. 11. 113
11 Co. 11. 113
19 Co. 11. 113
10 Co. 11. 113

As here a penal Stat expressly gives the whole penalty to the party, he need not join with the King but may sue alone. 1 Com 229

In conformity to these rules actions qui tam are given in Count in case of Theft, Forgery, and many other cases.

As here a fine is given to the King or public, and a civil remedy to the party injured, the fine may be inflicted of course on a conviction of the offender in the civil action. This is so by Com. law. This has not been the usual course in Count law. Stat against defamation inflicts a fine of \$10, yet the fine is not inflicted unless the Plff requests, or moves that the fine may be inflicted. Earth 396
2 Bac 561
5 Do 191
193

As here no form of action is prescribed for the recovery of Stat. penalties, the action of debt is the usual action. But it seems that in *debitatus a purpriet* will lie. All I could say, Earth 397
Pch. 175
4 Bac 562
2 Do 252
Earth 392 this has been held a good action for the recovery of a penalty. Where part of a penalty is given to the King and, part to the prosecutor, the King if he prosecutes may recover

done has an inchoate right to compensation as damages for the injury.

2 Hen. 3. 311

After a qui tam action is commenced the King cannot take away the right of the prosecution nor to the penalty or prevent the prosecution from proceeding to recover it. The King may release his whole right to the penalty. When a Stat gives a part of the penalty to the party grieved, the King cannot discharge the party's right even before the suit is brought.

2 B. R. 437

2 Hardw. 275

372

11 Co. 63

640 L. 138

Hutton 82

2 Hardw. 276

2 Hen. 3. 311

Before the Stat was made to the contrary the prosecutor could release his part of the penalty after the conviction, but this occasioned sham prosecutions for the conviction to prevent a second prosecution.

Stat 4 Hen. 4. provides that no covenous recovery in a popular action shall be a bar to any other prosecution for the same offence and that release after conviction is void. C. H. 3. You to think by com. law principles a sham qui tam prosecution will be no bar

Municipal law

is a second recovery action or prosecution for the same offence. Therefore that the Stat. of ^{11 Hen. 395} 36. 77. is in affirmance of the common law, for the first proceeding is void.

A bona fide release by the P^l after conviction or judgment would not by com. law bar the King to prosecute for his share of the penalty. Now by Stat. 19 Eliz. the prosecutor may not compound the prosecution at all, till after answer made in court, nor then without leave of the court under pain of pillory.

If a P^l in a popular action dies, withdraws or releases, the King may proceed in the suit.

If several persons are convicted together in a popular action for violating a Stat. only one penalty is recovered. But if they are prosecuted by the King each one pays the penalty. In the former case the penalty is considered as a debt and they are joint debtors, but in the latter case the penalty is inflicted for the crime or offence as a punishment. As each is guilty of the crime each shall be set

well furnished. Mr Gould thinks the case is not a solid foundation for this distinction.

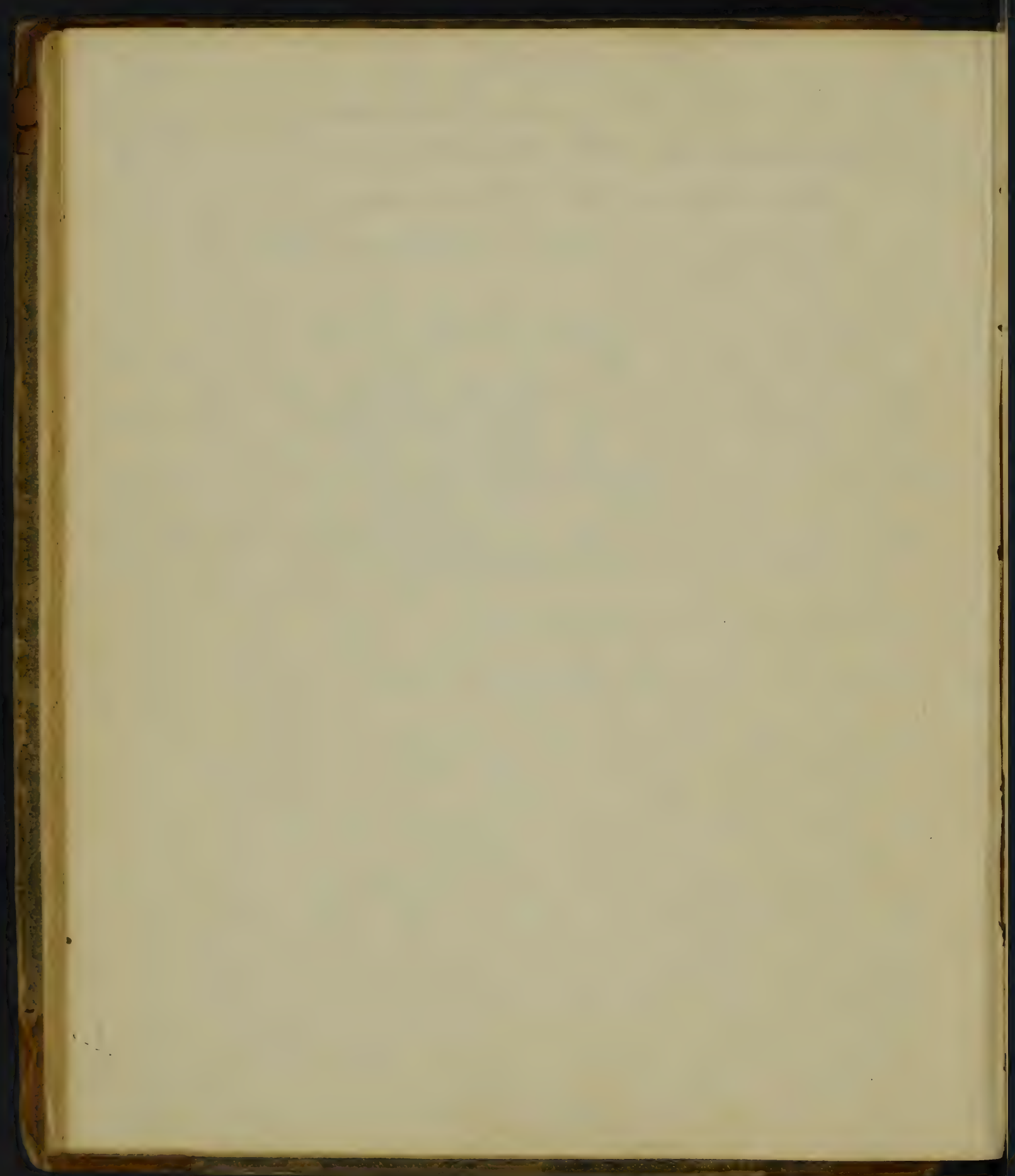
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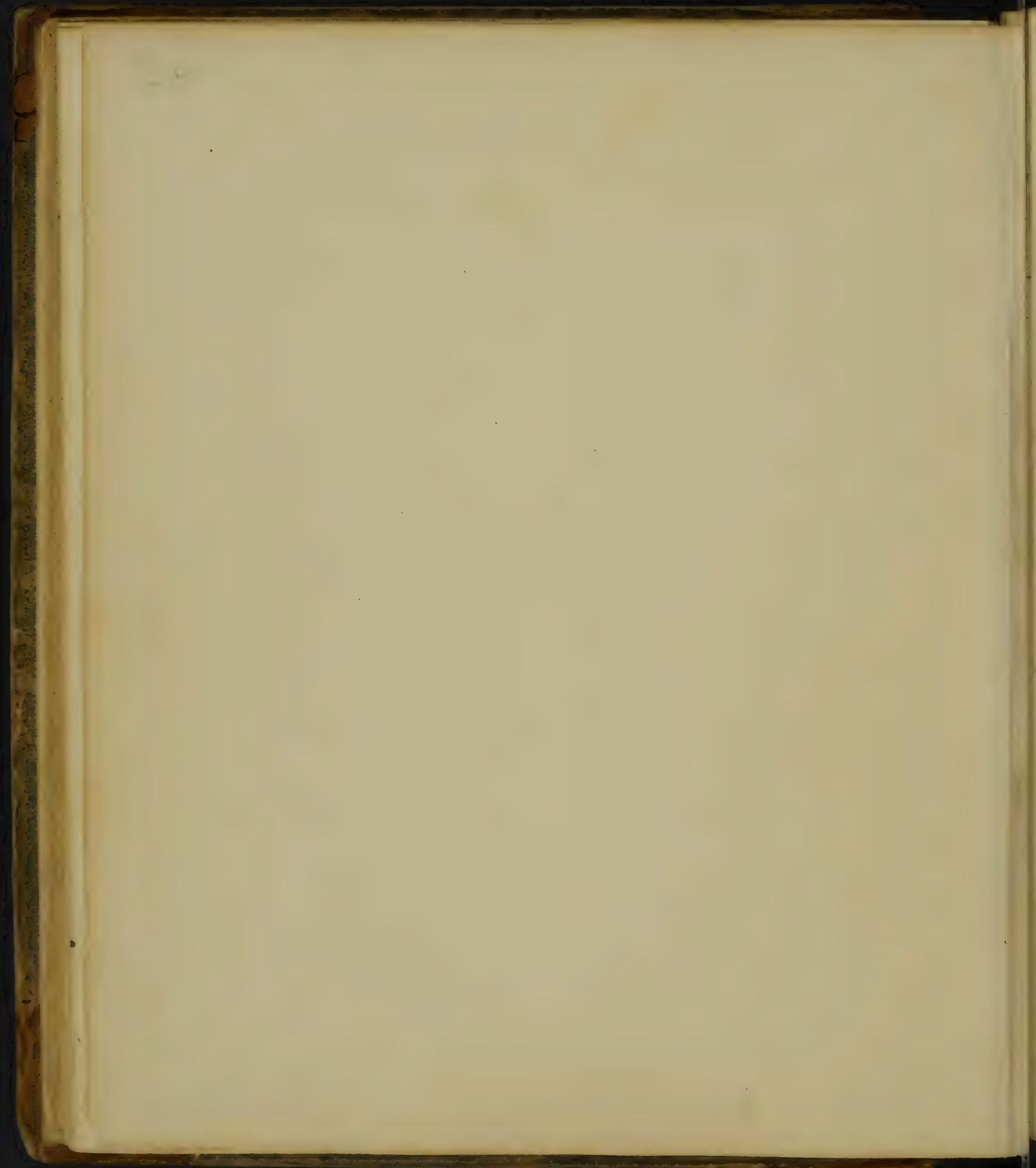
One offense may consist of a number of facts, so one fact may constitute a number of offenses. (vide Public Weights.)

Where several acts constitute but one transaction or offense, there can be but one penalty. Cow 690

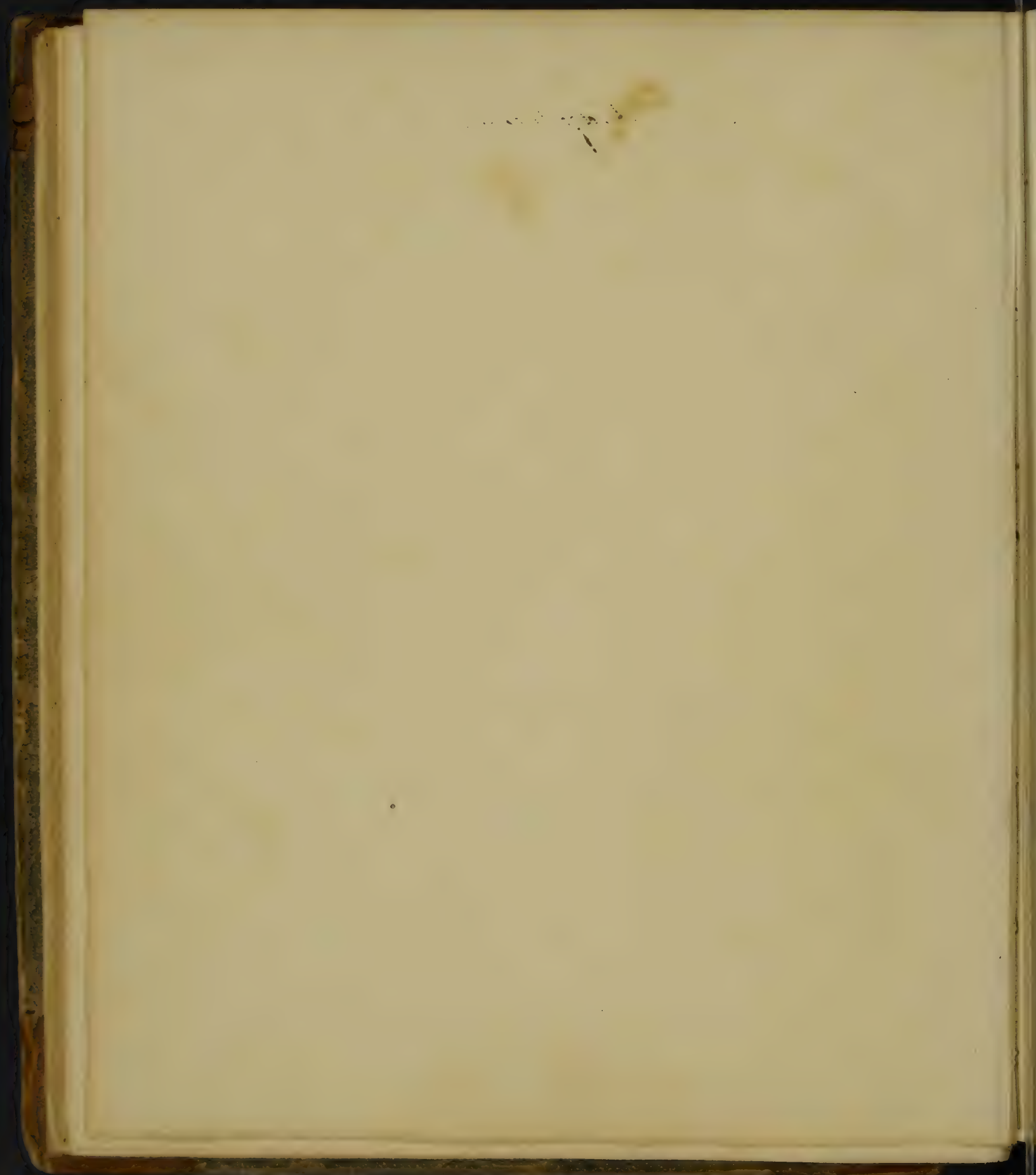
In hospital actions in Eng^d the Plff is entitled to no costs unless they are expressly given by Stat. (But where the party injured prosecutes only he is entitled to costs as in other cases in actions.

1 Bac 42
519
511
Jalks 216
1 Hawk 10





43



Judge Brewer - (

Husband & Wife.

The right which the husband acquires to the personal property of the wife 1st as to that in possession & 2nd as to her choses in action.

1st The personal property of the wife in possession is her money, furniture &c., &c.

The husband at the time of marriage acquires an absolute title to all her personal property in possession in the same manner as if he had purchased it with his own money. The property is transferred the moment the ceremony is ended, and can never belong to the wife again, nor be given her by will.

And this personal property of the wife is in possession on the death of the husband - it vests in his executors and not in the wife, & this is by operation of law. now there is some thing peculiar attending this transfer, for I knew of no other transfer which is good that

From this seems:

that a defunct creditor's debt is certain
and may operate injuriously against them
and they can have no relief.

It may be asked how this can happen when
the husband is liable to pay the debts of the
wife. Now it must be remarked that the hus-
band's liability to pay the debts of the wife
lasts no longer than during the coverture,
therefore if the wife dies before the husband
pays her debt the creditor never can recover
it from the husband. It also if the husband
dies before he has paid the debt, the credi-
tor cannot recover it from his Executors,
but he can in the last case provided the
wife has other property which did not vest
in the husband i.e. if husband die first
it remains her debt.

The husband's liability to pay the wife's
debt does not depend upon his receiving
property from her, for he is liable whether
he does or not.

The husband is never considered

as a debtor to pay the wife's debt does not de-
pend for if he was he would be liable to pay
them after his death i.e. his Executors would
be liable. But the wife is considered as the
Debtor and is therefore that the debt re-
mains ag. her, on her husband's death.

It may be asked then how is the hus-
band to be sued at all. Now the Husband
must be sued with the wife in case of the
wife's debt contracted before marriage. Now
the ground why they must be joined in a
suit I conceive to be this - the wife being
Debtor must be sued and by marriage she
is deprived of her property, therefore if a
suit was commenced ag. her alone Judgment
must go ag. her alone, and she must be
imprisoned, and remain there till her hus-
band was willing to pay the debt. Now
you cannot imprison one without the other,
for the debt of the wife, and when one is set
at liberty the other must be also.

2^{dly} As to the husband's right to the

Wife's shares in action.

Wife's shares in action.

These shares in action are notes, bonds, damages and debts. Now to them the husband is entitled upon marriage, but his right to them is not so extensive as to her personal property in possession; but it is as to the disposal of them, for he can assign them &c. But they are not vested in him by marriage; but only a right to them, for he must collect them in his own name and the name of his wife and when collected they are absolutely his and go to his executors.

12th 1842

more 1842

There was a question made where the husband had empowered another to collect these shares, and before the money actually came into his hands he died, but the court said it was sufficient to a proper assignment, for husband's agent had got possession and that was sufficient.

As the wife dies first these shares go to the husband as executor only and not as his

own property.

The husband may assign these choses in action and the assignment is valid and the assignee has a good title to them. This assignment must however be for a valuable consideration. Thus as to his own choses, for these he may give away without any consideration.

2. Atk. 207
417
Pro 66. 44

If her husband do not dispose of her choses in action during coverture he never can do it at all - he cannot devise them away by will, therefore if he dies before he disposes of them they go to the wife and if she is dead, to her representatives by the common law, but there is a Statute on this subject in 29th which I will notice directly.

There is a rule in Equity on this subject - In Equity they consider the husband as a purchaser of the wife's choses to which the husband has made a competent settlement on the wife before marriage. Now

Baron and Deme.

This settlement has nothing to do with a
jointure for that is in lieu of dower. But
when a competent settlement is made before
marriage the husband is entitled to her
chose both real and personal.

Now suppose she has money given to trustees
for her, and they do not perform their duty,
how is the husband to get it, for the legal
title is neither in himself nor wife, but in
the Trustees? He must go to Chancery for it.
But Chancery will refuse him unless he will
make a decent provision for his wife, ei-
ther out of that or in some other way. -

But they have dispensed with this rule
when the wife has no real estate and no
provision of this kind. But in this case
I must observe that it is not a rule.

But upon the husband's case for the in-
terest only is not the principal - but
he must exercise a discretionary power.
They will not allow him to take it if he had
a large portion of his wife, nor will they

let him take it if there is danger that the wife will not have a competent support unless he will make provision for her by a settlement.

The assignee of a Bankrupt husband's estate in the shoes of the husband and must therefore make provision for the wife, if they wish to get the money. If the husband had assigned these choses for a valuable consideration it seems that Equity will not compel the assignee to make the provision for the wife. Now I am and have been speaking of such choses, when the legal title is in some other person, except the husband and wife. I have also been speaking of an unwilling trustee - But suppose the trustee is willing, a court of Chancery will not interfere to prevent it and if the husband has a legal title he may obtain these choses without making any provision. It has been already stated that if the wife dies before the husband, her choses would go to her Executor to pay her debts, now his

2. Atk 490
10. W 932

1000, 1
bond or
mortgage in
Bro. Cury

7. Atk 210
2. Chan 414
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 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2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167.

There and There

either that the husband is the rightful administrator of the wife and may collect her home, now by the law, and the surplus remaining. The husband has paid all her debts with so, her representatives. But in Eng^d by Stat 29 Geo. the husband is not obliged to account for the surplus - it is his own.

It follows then that in those States where such Stat. exist the law rule governs, & that the husband being administrator must distribute the surplus to the wife's representative.

We have no such Stat. in Conn. i. e. York has one as to her equitable shares. The husband has the same right to them, that he has to her legal ones.

16 97.
18 100
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For an historical account of those persons who are permitted to administer on an intestate estate see the book cited in the margin.

He now considers the husband's right to pay, or retain in his own name until the return of his wife i. e. when he pays for her losses in debt. When a debt is obtained in his own name in the name of his wife for a debt due to

The wife, and the husband dies before he collected.
and before his wife. The judgment belongs to the
wife and if the wife dies before he collected, it
belongs to the husband.

1800 17-1
1800 18-9
1800 18-1

Now it may be asked on what principle does this
go to the husband absolutely, and not as Admin^r;
for he is not collected and therefore is an exception
to the rule as it respects choses which are not re-
duced to possession. The reason of this is, that
the judgment is a joint one, and upon the principle
of joint tenancy it survives to the husband
by the joint association that gives it to the hus-
band - therefore he clear that wherever the prin-
ciple of survivorship does not exist, the hus-
band cannot hold this judgment absolutely as a
husband; but only as an Admin^r of the wife,
and that it will be a debt in his hands to pay
her debts. Now in many of the States this doc-
trine of survivorship is entirely exploded; it is
in count. Therefore in those States where it
does not exist, we must treat it in the same
manner, as we do in case of joint merchants;
therefore the husband has a right to collect the

Baron and Bona
judges and that is all for them he must ac-
count for it and as Administrator it will
be a debt on his lands to pay the wife's debt.

I have already laid down the rule that
the husband might release the wife's choses
during the coverture. But if the wife has an
annuity for life the Husband can release
his only during the time of his own life, or
during the coverture, here the ground of this
is that an annuity is real property, being in-
alienable hereditament. It is not personal
property. I will next consider the right which
the husband has to the chattels and of the wife.

By chattels real I mean generally he leases
for years, for so long as there is this country.
And 1st he has the same power to dispose of
them as he has of her choses in action, and they
are also liable to be taken by an Execut^r for the
debt of the husband.

And 2^d otherwise in case of choses in action, bonds &c
execution cannot be levied upon them.

Now these choses are taken by way of a trust
as title is transferred from the wife to the husband.

Baron & Bona

624 370

351

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624 370

351

But suppose we further dispose of them as
they are taken by executors. Why then he has the
improvement of them, and the profits arising
from the improvement of them as rents &c; and
if the husband dies without disposing of them,
they will then come back to the wife, in the
same manner as her dower. And if the wife
dies they will then go to the husband not as
administrator but absolutely, even in case
of dower, for they on the death of the wife go to
him as administrator. But he holds these
chattels real as his own. -

1 vol. A. 341
2 vol. A. 318
1 vol. A. 290
1 vol. A. 340
- 345

In this case for years were mortgaged. The
equity of Redemption belongs to the husband
on death of the wife. - now it may be asked
how the husband should be entitled to this case
or years upon the death of the wife. No other
reason can be given only "ita scripta est" it seems
to be a most positive rule of law. But his com-
mended by some that he upon the principle of
joint tenancy, the more as in case of a joint
tenancy this is not true for in order to constitute

Holt 2
Holt 213

Baron and Feme

a joint tenancy, the title must commence at one
and the same time, and they must hold by the
same right and it must also be created by the act
of the parties. Now this is not the case it seems
if that were this we may infer that the reason for
the husband's holding this case for years after the
death of the wife is ~~as~~ here in this country the
same as in Eng^l, for it does not depend on the
ground of joint tenancy.

The husband cannot devise away by will these
leases for years or chattels real of the wife. The law
has a loan of them to commence after his death
would be good.

The husband may lease the wife's term and
if he should die the rents he would go to his
executors. I am sure the wife would have the re-
version, and if he were then why does she not
then also have the profits as is a rule that the
rents shall follow the reversion. I answer that
rents follow the reversion in case of a fee but
not in case of a chattel real. Therefore he
cannot have the rent - the wife has the re-
version.

21. 201
21. 201
10. 21. 21
10. 21. 21
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10. 21. 21
10. 21. 21

There is one case in which the husband cannot
have it viz. when a feme sole owned a chattel
real, and was shipwrecked before marriage. Now in
this case if the wife dies before the husband enters
the shipwreck, or before he reduces it to possession
he cannot hold it, on the ground that the person
must be seized in order to have his property des-
cend to him. But it will go to her representatives.

The wife may have been spoiled of children
and as an Excentric before marriage. in this
case the husband gets nothing by the marriage.

[illegible]

I will next consider what interest the husband acquires in the real property of the wife at the time of marriage i.e. in her lands or any estate of a real nature.

by the marriage alone the husband acquires the use of all her freehold estate either in fee simple, fee tail, or for life, during the coverture.

The use of this estate belongs to him for life,
and if nothing but marriage is in the case
or the death of the wife his at an end as to the
husband; for it will in that case go to her heirs

Baron and Deane

At law now the wife during the life time
has no other interest in the estate, only if his a
fee simple the fee remains in her. Therefore if
there is an injury done to the wife it is an injury to her
by some thing waste &c. is an injury to her
and she must be joined in the suit. But if his
injury is to the use only as by impairing the
crops &c. she is not to be joined.

Now what I have just mentioned is true, du-
ring the life of the husband, but on the
death of the husband in the life time of
the wife, the wife becomes sole owner of the
land, But suppose at time of husband's death
there were implevements growing on the land,
now these are viewed as personal property
and go to his executors?

But suppose the wife dies in the hus-
band's lifetime. This real estate of the wife's
descends to her heirs at law, and the hus-
band has no interest in it at all.

I have thus for consideration what the
Husband acquires by the marriage merely,
but he may have an interest beyond this.

which is called an estate by courtesy. Now in order to entitle him to this estate he must have had a child born alive by this wife who would have inherited. The wife in this case must have been actually seized in order to have the husband take by the courtesy. *lit. vol. 29. 51*

Now the husband will hold this estate by the courtesy during his life and on his death it the wife's heirs will take it in the same manner as if an child had been born.

By the tenure of gavelkind is not necessary to have any child born to entitle the husband to this estate by the courtesy, and as our tenure in Cornwall is gavelkind under the charter, a question might have arisen at some former period whether a husband here could not have been entitled to this estate without having any child born. But the com. law has always prevailed and I suppose is now too late to make this question.

It was formerly made a question whether a man could be tenant by the courtesy in a

... and ...

Just estate - as when an estate is given to trustees for the use of the wife and she has a beneficial interest. But he now settles that he can be tenant by the Curtesy, in such an estate.

A man may marry a woman who has leased her lands. Now in such case he will have the rent only. For he cannot have the use, as he does is entitled to that. He has the rent in lieu of the use and on his death the rent will go to his Exors. But if there was rent in arrears before coverture that goes to her on his death as any other chose in action.

1. I will not consider what portion the wife has out of the husband's estate in his death.

This section consists 1st of the Paraphrase, 2^d the Creed & 3^d 4th Gospels.

the rate was also paid in advantage by the

marriage. For when the husband dies intestate she is entitled to one third part of his personal property after all the debts are paid, and in case there is no issue she is entitled to one half of his personal property after the debts are paid. But this personal prop^y may be devised away.

But there is one species of personal prop^y which is not in this predicament, and that is her Paraphernalia. Her paraphernalia are of two kinds, the first consists of her bed, bedding, and cloathing, the 2^d kind consists of her ornaments, such as jewels, watches, &c. - as to the first kind they never can be considered as his estate at all. They are not to be int^rcuried, and will not go to his executor, but are absolutely the wife's property. Now I suppose she can hold only a suitable number of these articles.

as to the 2^d kind viz her trinkets &c they cannot be devised away by the husband. They are not the subjects of his will. To be sure he may take them away from her any time during the coverture. But on his death, if he does

Baron and Sene

not take them from her, they are in the wife and his executor cannot take them unless there is a deficiency of assets in his hands to pay the debts, for in such case he may take them.

2. 46. 510
But they cannot be taken for the purpose of paying legacies, a volunteer of any kind. But only for the purpose of paying creditors.

2. 118. 395
Suppose the husband pledges his wife's jewels &c and dies now she shall have the aid of her personal property to redeem them and she shall be preferred before legacies for this purpose.

2. 4. 307. 30
2. 118. 300
1. 28. 744
2. 118. 344
Suppose lands are devised to pay debts, if her paraphernalia are taken she will stand as a creditor and may compel a sale of those lands to reimburse her. And the rule is when her paraphernalia are taken that she is inferior to other creditors but superior to volunteers.

In most of the States the real estate can be sold as a fund for the payment of debts,

but the personal must first be exhausted,
this being the case a question may arise
whether the wife's paraphernalia could be
taken to pay debts like both the real and
personal estate were exhausted. It would
seem upon principles that they could not
be taken like both were exhausted.

The wife also on the death of the hus-
band becomes entitled to an interest in his
real estate: and this interest consists of one
part viz. third part of all his freehold es-
tate either in fee simple, fee tail, or for life;
and by the common law it must be one third
part of all of which he was seised during
the coverture; and this estate is called the
wife's dower. The husband cannot deprive
the wife of this estate by will, nor by any
conveyance during his life time, unless
the wife joins in the conveyance.

It is not necessary that there should

Heron and Stone

be an actual seignior of the Husband to
entitle the wife to dower. A right to seignior
or a legal seignior is sufficient. Thus in case of
curtesy, shall farther it must be such an estate
as his wife if she had any might have inher-
ited, otherwise she can't be endowed.

Now you will remark that his act is not
such that issue should actually be born, as
in case of curtesy, but the only enquiry
is whether a child could inherit provided
one were born.

Now this can never happen in a fee
simple estate but in a special entailment
generally if not always.

This estate of dower is not only out of the
power of the husband to devise away, but is
also out of the power of the creditors i.e. if
they take it, they will have it with this in-
cumbrance upon it. Creditors to be sure
will have it after her death in the same
manner as it will descend to his heir.

so that there is this difference between

The husband's real and personal property for in case of personal property to the wife absolutely on the death of the husband, but in case of real property to her for life only. Again, personal property is liable to be taken for the payment of his debts, whereas real property is not.

By the com. law the heir at a certain given period after the death of the husband is obliged to assign the widow her dower, and if he refuses, he is compelled to do so by a legal process. The Stat in the different States have made some small variations.

In Conn. the Judge of Probate appoints two or three judicious freeholders to set out the widow's dower by metes and bounds and a confirmation of the return of these persons by the court of Probate gives the title to the wife for her life. An appeal lies however from the court of Probate to the Superior court.

In Conn. the wife is entitled as

Brown and the wife

has dower only to one third part of the real estate of which the husband died seised and not of one third part of all of which he was seised during the coexistence.

But this dower may be barred in several ways - 1st This said it may be barred by the husband's being an alien. Now an alien cannot hold lands at all, this therefore means nothing more than that when an alien purchases lands; is suffered to hold them it being perhaps unknown that he is an alien, and dies seised of them in such case the wife cannot have dower out of them, for an alien can hold no lands and they were liable to be taken from him at any time.

Dower may also be barred by an adultery of the wife with an adulterer, as it respects this her right of dower is restored if the husband afterwards receives her and treats her as his wife.

11th 1797
11th 1797

But the most usual method of barring dower is by settling a jointure on the wife.

Now this jointure must be settled upon her before marriage, when she cannot be compelled to be under any coercion of the husband. And she must also agree that it is in lieu of dower. This jointure must consist of real property; it cannot consist of personal property; i.e. it must be either a fee simple, fee tail, or an estate for her own life.

It must be well secured that she shall become entitled to the enjoyment of it on the death of the husband.

Again, the jointure must be a substantial livelihood and generally it must be proportioned to his property and her rank and situation in life. If there arising any dispute as to the competency of it the court are to determine it. This jointure must be conveyed to her and not to trustees in use for her.

It is a general rule that after a person has once made a contract or bargain

can and then

he cannot rescind it or have any relief as he
it may prove to have been a very bad one.
But the wife cannot make an independent
bargain, as to her jointure, the court will on
application set aside the general rule,
rescind the contract, and give her her share.
And this is based on reason for the wife
is not considered in a situation to make a good
bargain at the time of marriage. The court
will therefore assist her.

It must be expressed in the jointure that
it is in lieu of dower for otherwise it might
be considered as a marriage settlement which
is not to be dissolved. A jointure is a provision
settled on the wife after marriage. Now if there
were a letter of agreement entered into by the
husband before marriage, that a jointure should
be made after the marriage, a jointure made
according to this agreement after marriage is as
the jointure would have been before marriage.

A jointure is made after marriage with-
out any such agreement. The wife has her election

either to take this picture or her Power.

But she cannot have both - Acceptance of one of them therefore will bar her from receiving the other.

Formerly the wife was considered "coincidental" with the personal property of the husband, now in these times she holds this personal property absolutely in the same manner as she now does the real estate in Power.

A legacy given to the wife may bar the Power, but it must be expressed to be in lieu of Power and the wife has her election either to take the legacy, or to take her Power.

29. 18
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2. 18

There is one function which obtains in most of the States, and which I conceive to be a very bad one - is this the husband in making his will says - "I give my wife one third part of all my real estate during her life," without stating that it is in lieu of Power - Now it ought to be expressed in the will that it is in lieu of Power, for in strictness of law this may be considered as a legacy merely, and she might take another third by due

Prison and then

course of law is being her dowry.

It is true the court of Probate in this State have been governed by the supposed intention of the testator and have allowed the widow no more than ^{the} one third expressed in the will; but I do not know how a higher court would consider it.

There is a case in the 3d K.B. which has been regarded to be opposite to the general principle as to dower. In that case it appears that Chancellor King held that if a bond was given in trust for the support of the wife, it would bar her of her dower unless it were a sufficient livelihood. Now nothing more is meant in this case than that she may have her election either to take the bond or her dower, and that if she does elect the bond it will bar the dower; and not that she is compellable to take the bond, for clearly she is not.

1847
I have already observed that the wife must join in the conveyance in order to bar her dower. So also she must join in a mortgage or it will not affect her dower — The wife may redeem.

if her husband's estate was mortgaged before her marriage she must redeem, before she can be entitled to Dower. When the heir comes to pay his part of the money he need not pay the interest.

If land settled as a jointure should be mortgaged she may abandon them and resort to her dower, or she may redeem them and the heir in this case must pay the whole of the money together with the interest.

A wife cannot be endowed of an Equity of Redemption. Neither the mortgagor's wife can be endowed of an Equity of Redemption, nor can a mortgagor's wife be endowed of the interest which he has in the mortgage. Now not giving the wife dower in the Equity of Redemption is certainly destroying the symmetry of the law and as Sir Joseph Jenkins thinks, for he decided that she might be endowed of it. But this decision has since been overruled. This is a case in which I should not hesitate to vary from Eng^l decisions, for clearly there is no principle in them.

10th. 606
1 Chanc. Cas. -
271

20th. 252

And in this State they have deci-

Baron and Sme
dec that the wife may be endowed of an equity
of redemption.

Ware 401
Case 190

Wife of a Mortgagor can't be endowed.

Equity can't consider the right of the husband to
the personal property of the wife which accrues
to her during the marriage such as Legacies, Dam-
ages for injury to her, &c. &c. There are two dif-
ferent opinions here on this subject, one is that
any personal property accruing to the wife dur-
ing the marriage belongs to the husband at-
torney whether he collect it before his death
or not. The other opinion is that such property
is the same as any other chose in action belonging
to the wife before marriage, and therefore if the
husband does not collect it during his life time,
it will in such case go to her or her representa-
tives, and not to his Executors.

But they all agree in this, that the hus-
band may institute a suit in his own name to
recover such choses as accrue to the wife during
marriage.

In the case in support of the opinion

that her wrong will survive to the wife, on the death of the husband as the cases cited ^{very late} in the margin. 200497

And for the other opinion viz. that the liability to the husband absolutely whether he lives or not - which by the way, I intended to be the true doctrine in case in margin where there are other cases ^{1 Com.D. 558} cited to support this doctrine.

Now this is a question about which we can reason but very little if any at all - But I take an important rule to guide me in this case viz. that which destroys the symmetry of the law may be presumed to be incorrect and that on the other side which preserves the symmetry may be considered as correct. There is also another reason in support of my opinion, which is that the husband as is agreed on all hands may recover then chooses in his own name. he need not join his wife in the suit to recover from which is always to be done. when a suit is brought to recover choses due the wife before marriage.

I will next consider his right to damages, arising from injuries done to the wife before and

Baron and Sower.

after coverture, as by beating her person or flouting her reputation.

For all damages arising from injuries done to her before marriage, the husband is entitled to them, & if he affects them during the coverture they belong to him absolutely, if not on the death of the husband they will survive to the wife.

If the injury is done during coverture the damages belong to him if he affects them but if he does not on his death they will survive to her. If he dies a widow then he must be joined with the wife.

But of this transaction of flouting and beating the wife, there arises two separate actions, the one I have already mentioned viz. that he is liable for an injury done to the person of the wife. But besides this, the husband is entitled to another action in his own name for the damages which he sustains in the loss of his wife's company and service. This is an action at trespass, "her quod consortium amisit".

So also any expense which he might have been at is included in this action. Now these special damages recovered in this case do not go to the

year 1794
1 inch 460
6 inch 301
4 inch 446
1 inch 90
1 inch 119

wife at all, but belong absolutely to the husband.

So also in some cases the husband may have a special action in his own name ag. any person who flanders his wife, for this may work a great injury to him. as in case he is an innkeeper and the reputation of his house depending in a great measure on the character of his wife, if she is flandered it works an injury not only to her, but to him also.

1 Jalk 206

1 Dec 140

1 Sid 346

800 J 501

7 Jalk 450

May 779

The husband is also entitled to all the property which the wife obtains by means of her labour; or by any act by means of which she acquires property; he therefore has an interest in the labour and person of his wife - and if any person seduces her or takes her away from the husband, the husband has an action ag. such person to recover damages for the injury sustained.

But on the other hand the wife has no right to the service of her husband, and cannot therefore maintain an action for the loss of his service.

I will next consider the injury and

Baron and Fane

The remedy in case of criminal conversation
 with a man's wife. The action to be brought
 in such case is in form trespass, but
 is founded on an offence, in the case for damages
 for the seduction of the wife. Formerly it was held
 that there must be a necessary identification,
 but it has lately been determined that if the
 husband is living to the last, a joint action
 cannot be brought, he cannot recover anything.

If the husband and wife agree to part by
 articles of separation and return into bed and
 chamber for adultery committed after the separation,
 the husband cannot recover, for he has
 waived all right to sue for adultery.

30. 10. 11

11. 7. 1677

5. 8. 357

1. 10. 1677

- 18. 2. 4.

14. 10. 1677

1. 10. 1677

20. 10. 1677

Ben. 1. 1677

Ben. 1. 1677

2. 10. 1677

These articles of separation must be written ones.
 And thing in point of proof which is practice
 that is not sufficient to prove marriage
 separation - a marriage in fact must be
 proved.

to be that that diminish or increase dam-
 ages in this case the character of the wife before
 marriage must be considered, so also if the

husband keeps disolute companions at his house
this will tend to diminish damages.

Power of the husband over the person of his
wife. There is no settled rule as to what this
power is. Formerly he had the same power over
her, that he had over his servants. But during
the reign of Charles 2. the wives began to be con-
sidered as deserving better treatment than ser-
vants, and from that time forward have been
treated in a most tender and respectful manner.

The lower class of citizens however in Eng^d
claim the right of chastizing their wives.

There is no right of chastisement recognized by
the Law of Con^t.

The right of finding fault is for good behav-
ior. This right the husband and wife both
possess; and tis the only action they can have
against each other. I shall consider this more
largely hereafter.

It seems that if a wife should go
away from her husband without a cause, he
would have a right to seize upon, and retain her.

Green and Stone

Aug 9'93.

478

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Dec. 6/74

1800. 11. 3

7. 11. 11

1510

27, 1881

4 Dec 1899

He also said that he may imprison her to her
- and has been going away with an adulteress,
also able to prevent her from destroying his
reputation. But he thinks that she will not
forget the wife to leave her friends if she fled
from the sensuality of her husband.

next consider the husband's liability to pay the
debt of the wife due from her before coverture;
and also his liability to answer for her torts,
and wrongs committed both before and after co-
verture. 1st As to her debts. I have already said
some things on this subject in the first lecture.

By the marriage the husband becomes liable to pay all the debts of the wife due before coverture. But his liability lasts no longer than during the coverture; if therefore either husband or wife die before they are paid it discharges the husband and his executors. This liability does not extend on the fact whether the husband receives any thing from the wife or not. So that by a suspension of law creditors may be deprived of their just dues.

The true principle on which the husband is made liable to pay the debts of the wife is, that a wife cannot be sued in a civil action, without being joined with the husband, and the wife cannot be imprisoned without her husband is also imprisoned with her.

There is one case however in which the wife may be imprisoned without her husband, and that is where a bene vol is made and then married here independent will go against her in her curiam non.

Bar 1107
1272
1 wife 124
Bar 96
261 2720

As to opening bonds it must be if sued against both husband and wife and if the wife is taken and the husband abscond, she must be discharged.

1272 395
1272 51

If a husband and wife should be joined for a debt of the wife, and the wife dies after judgment is rendered in this case, the judgment may be collected from the husband, but if she dies before judgment and during the pendency of the suit, the suit will abate because the debtor is dead.

This is substantially an exception to the rule, but is not technically.

Next consider the liability of the husband for the torts of the wife committed both before and after marriage.

The damages arising from her torts committed before marriage must be collected from the husband during the coverture, just in the same way as debts due from her must. And the suit must be brought against both, they must be joined.

Suppose he dies before they are recovered then the wife alone is liable and if he should die before they were collected, he is not liable, no, not even if there are choses in action coming to him as administrator of the wife, and the reason is that a personal injury or tort dies with the person, his due not and not his own, still however if the wife were benefitted by this injury or tort he might be liable in some cases.

1202 42
1204 6

The husband is also liable for torts committed by the wife after marriage. Now the question is, is the husband liable alone for

Sarah and Sam.

then. In the same way were liable together,
 In this case 'there may be cases in which they
 may be both liable' and case in which he alone
 is liable. And the ground of his liability alone de-
 pends upon the question whether it may be con-
 sidered as his tort or not. So if the husband
 commands her to do a wrong, and she does so it
 she is considered as the mere agent in this business
 and therefore the husband alone is liable.

So also if she does a wrongful tort in com-
 pany with her husband, his his wrong and never
 will involve to the wife.

Now this rule is peculiar to Honor and
 Rome only - for in all other cases if one person com-
 mands another to do an unlawful act and he does
 it, they are both of them liable.

The ground on which the wife is excused in
 such cases is, that she is supposed to act under the co-
 ercion of her husband.

But suppose the wife commit the tort with-
 out the knowledge of the husband being neither
 done by his command, nor in his company in such
 case they are both liable, for the wife's wrong,
 and it will be the claim of the husband if not

1. 251
 2. 171
 3. 170

Reasons for
not being injured against her.

I have therefore considered the private inju-
ries or torts of the wife.

And next consider the liability of the
husband, for any offence the wife may commit ag-
ainst the Public. And the rule is, that when the pun-
ishment inflicted is nothing more than a fine, the
husband is liable with the wife, they must be
joined in the suit.

But where his imprisonment or corporal
punishment the wife alone is subjected, for in
this case she has all the means of avoiding out-
eraction. If the wife is liable to a fine, the
husband must be jointly liable with her.

It is a general rule that if there are any duties
which are incumbent on the wife it shall be
the husband's duty to perform them. He is bound to
be a good father, to provide for his children before marriage
and it certainly is one of his duties to provide for his
children (and none) after marriage by the
husband's duty to maintain them.

But suppose the widow was a Puritan
in this case the husband is not bound to sup-

not her children, because it was not in duty before marriage, but the duty of the ~~husband~~ wife being a trustee. This is the received opinion on this subject. But there is an exception to the general rule in the civil law, and we have shown it - in this - J. Hiles marries Mary who is possessed of a large property, but when her debts are paid. Now J. Hiles upon the principle I have mentioned would be held to support Mary's parents. but he otherwise in this case for he is not bound to support them. but the other children must do it.

15th. 190
the law of
the state of
Connecticut

There is a case in 4. T. R. p. 118 and the grounds on which it proceeds I should very much doubt. It does not accord with the rule which I have laid down and which I conceive to be a correct one.

At Stat. of Eng. created the duty of children to maintain their Parents. No civil law for this purpose. But is a law of nature that a Parent is bound to maintain his children.

It will not consider in what cases the wife is excused, when she has committed a tort in company with her husband. and 1st of her

Law and Equity

is an offence in either prohibition only, the offence is both and she is excused. So also when the offence is against liability to cohabitations that offence may be the wife is not liable but the husband is liable.

43. This must extend to crimes which would have been so in a state of nature, as murder &c. here where the wife is liable. It is also liable in the 10th & 11th. There is one case in which they are not liable viz. for beating a brother.

43. A wife cannot be made accessory after the fact in felony - but she may be an accessory before the fact.

What contracts made by the wife make her binding on the husband and not on her. I mean contracts performed by her.

Now a wife can act as attorney for her husband - therefore if a contract is made under an express authority from the husband, he is bound by it. The principle here is that he is bound to the contract "qui proit, pro utitur, licet non" again the husband is also bound by those contracts of the wife, which it was usual for him to make and for him to satisfy, the principle

here is, on the former ground that he has given
his consent. 3^d The Husband is also bound to
fulfill a contract of the wife, when he such an one
as wives according to the custom of the Country
usually make. E. g. If she goes to a Merchant
and takes up such goods as he usual for
the wife to have. 1 id. 178
1 id. 350
1 id. 126
1 id. 345

But suppose she were to borrow money
for this purpose. The authorities say he would
not be liable in such case but I think he would
be in this country.

4th The Husband is bound by every contract made
by the wife for his use, and by which he is actual-
ly benefitted. If she should purchase a yoke
of oxen, and he should use them he would be li-
able to pay for them - taking benefit of the
purchase furnishes evidence that he authorized
it.

5th The Husband is bound by contracts
of the wife which generally he would not
be bound by, were it not owing to certain pe-
culiar circumstances —

E. g. The husband goes into

a foreign country, here the wife may carry on the business, and have a right to sue him, even if he were at home. & also if the husband is incompetent to transact business by means of sickness, insanity &c. the wife may contract and be bound by them.

§ 44. The husband is bound by her contracts in a foreign country, when he consents to support her and her family. E. G. J. Miles drives his wife out of doors, and she goes and furnishes herself with necessaries, J. is bound for this contract of the wife, even though he should not have been told of all her expenses. But suppose he does not actually drive her out of doors but she has good cause for leaving him. In this case also he is liable to maintain her, even though she has been driving him.

But if she departs without any reasonable cause, he is not liable for her necessities, but if she comes back again, he is liable to maintain her. But if she departs with an adulterer he is not bound to maintain her, even though she comes back again.

I have observed that the husband is not liable for the necessaries of the wife, if she elopes with an adulterer. But in those the wife thus elopes and contracts for necessaries, he said in the books that the husband would not be liable for them even if the seller did not know that she had thus eloped. Now I conceive this decision is not founded on principle, for he related that where a servant took up goods immediately after he was discharged from his master, the master was liable, for this dissolution of their relation was not a matter of notoriety.

Now it seems to me that this case of the servant is precisely in point as to the case of the wife. The wife in such case would not be liable, for those necessaries. 1 Brod 47
706
U. R. 603

If a wife who is an adulteress lives with her husband, he is liable for her contracts.

It has been said that there is a case in Boscawen & Puller, in which he decided that the husband is not liable in such a case. But

Bacon and Howe

that case differs from this, for there the husband left the wife who continued an adulteress but conceive in this case he would be liable provided the person who furnished her with necessaries did not know her situation i.e. that she was an adulteress, and that her husband had left her.

If husband and wife separate by mutual agreement and the wife has separate maintenance allowance, if this separation is a matter of notoriety, the husband is not liable for her contracts for necessaries. Now this proceeds upon the ground that the separate allowance is sufficient for her support, for if it is not he is liable. Suppose they have no property at all and there is a separation, in such case if the wife is able to earn by her labour sufficient for her support, the husband is not liable, but he is liable if she is not able to support herself by her labour.

1. 2440
118

4 Dec 1777.

I have said that a man could not be liable

persons lending his wife for a certain time
cases. Now this must be understood with some
restrictions, for he may fabricate some particular
persons, who may be his enemies. 6 Moo. 171
2 Show. 253

If a wife should buy necessaries living
living with her husband, and should sell or
pawn them before using them, the husband is
not chargeable to them - now I cannot account
for the ground of this decision, unless it is
that they must come to his use in order to
make him chargeable. But his liability com-
menced at the moment of the purchase and
I cannot see how any after misconduct of the
wife can discharge him. 14 H. 118

It will not bind her husband by a deed
in her own name unless there is a special
authority given her as by power of attorney.
It would not bind him if the deed was given
for necessities. But the husband would be liable
in an action on a promissory note. 12 H. 176

A contract for money loaned to be paid
out for necessities will not bind the husband
in a court of law, but it will bind him in Equity.

Baron and Polne

12th 237 The rule in Equity ought to be adopted in
10th 489 courts of law, for it is the correct one.
- 559

Hutton 115- If the wife is committed to prison for a crime.
10th 128
2nd 154- The husband is not bound to pay for necessaries
1st 445- furnished her - the public must do it.
2nd 166
1st 16
2nd 112

Next consider such debts as are due and owing
to the wife from the husband at the time of
marriage; upon the marriage all debts due from
the husband to the wife, be they are at his
disposal, and they are also in his possession.

But suppose a bond or note is found
after his death in favour of the wife against
him - how this belongs to the wife against
the Executor.

Next consider such debts as are to be paid
after the husband's death. By contracts entered
into by Husband and wife before marriage to
provide for her after his death are binding
both in law and equity. Formerly they were
binding in equity only but now not.
11th 115-
1st 556
2nd 167
1st 117
1st 440
3rd 335

Next consider their contracts respecting
real property made before marriage, or a con-
veyance of real property by the Husband

to his intended wife.

Now a conveyance of this kind from a husband to his intended wife is binding on him after the marriage. It remains his just in the same manner as if any other person had conveyed it to her - so that he can have the use of it only.

Next infer from the consequence I made after the marriage - how this is a maxim of com. law - that Husband and wife cannot contract together after marriage, because he said they are one person in law: ~~now~~ this is true as it respects personal property, they certainly are two separate persons, for a devise of lands to her does not vest in him but in her and he can only have the use of them.

Now in obedience to this maxim it seems to have been a rule of com. law that a husband and wife could not convey real property to each other - now he told us that a wife cannot convey lands to her husband during the coverture.

To convey the Husband could not convey land to his wife, but a plan was contrived

Baron and Fane

we made this by conveying the land to a third
person, and then he conveys it to the wife, but
this was absurd. If J. Miles would convey
land to T. Stokes, and Stokes would immediately
convey it to the wife of J. Miles. So that a hus-
band may convey what properly is his wife's
this would be absurd.

But now by the Stat. of uses this con-
veyance can be made strictly in J. Miles con-
veys land to T. Stokes for the use of his wife,
and as soon as this is done the Stat. vests the
title in the 'cotey que use' who is the wife of
J. Miles. We have no fault that is found but
take the other method, by conveying to a third per-
son and then he conveys it to the wife, and
this mode is in constant use.

I have observed that the husband cannot
convey personal property to the wife, but that
he can real property. But in Equity, an agree-
ment entered into by husband and wife ~~shall~~
at the marriage that the wife shall have cer-
tain ~~in~~ titles, and have the benefit arising
therefrom the sale of them is binding on the husband.

To. Pitt 12
2 Dec 785
H. 100. 111
Nov 106

1000-937

But a voluntary promise made by the husband that he will at some future period allow the wife such privileges as selling certain articles for her own benefit cannot be enforced in a court of Equity. Articles of agreement entered into between Husband and wife to live separately. I will mention the English law on this subject and whether it is recognized in the U. States I do not know.

In these agreements the husband is bound by all the legal covenants entered into. The husband may renounce his marital rights and as far as he does renounce them he never can retain them. So if the husband and wife agree to live separately and nothing more, he has renounced all right to her person and nothing else.

So if he covenants to allow her a separate maintenance, he is bound by it, but in this case if a legacy should come to her, he will have it. So if lands descend to her he will have the use of them. But if he covenants to renounce all property coming to her, he is bound by it and of course can have none.

Now in all these agreements nothing is to

Baron and Keen

taken or lost by implication every thing must be
expressed.

He can suffer no injury which may be afforded
to her person after the separation. He cannot seize
upon her person, if he attempts to do so he is liable to the
penal law, neither can he receive her any criminal
injury with her after the separation.

She can use her real property without
interference with her husband in a fine provided he
has renounced all right and title to her person
and property.
The doctrine of separate maintenance in the
Married Women's Property Act of 1881 is
authorised in the margin. Case of *Thorne v. Thorne* in
1881. It was an agreement of marriage
in the support of the wife, provided it should
be afterwards necessary for them to separate,
and this agreement was held to be binding. See
in support of the doctrine in *Thorne v. Thorne*
in margin.

Now in all these cases of separate maintenance
the wife is considered as a feme sole, except as to
marrying again.

It has been said that after separation the
husband has the power to alter these articles,
but nothing but a mutual agreement of the

She 409
2. 1881
England
separate
1881
4. 1882
Bar. 402
407
408
Re. 1881
406
2. 1881
3. 1881

2. 1881
1. 1881

1881
1881

1881
1881
1881
1881

2 Dec 1740

30th 1741

3rd 1741

parties to cohabit together again, with a
discharge of the articles.

The wife is entitled to creditors in point of obtain-
ing her separate maintenance.

Contracts by which a wife may bind herself.
It is a general rule that she cannot contract so
as to bind herself. But there are cases in which
she may. If therefore we can discover the true
ground which makes her contracts void, it will
follow that wherever these grounds do not exist
she may contract, and that her contract will
be good.

Now the grounds which render her incapable
of contracting are these 1st The husband's right
to the person of his wife and 2nd The law con-
siders the wife to be in the power of the hus-
band. Therefore whenever we can discover that
no marital right of his is affected, and also
when we can presume her not to be under any
exercise of the husband, she may contract
and her contract will bind her.

Twice now mention is made in support of
this idea, which cases have never been disputed;
they are settled law.

Harrison and Fane

Harrison 3
Fane 66
Cott. 188
Roll 480
Incor. 546

1st Case was where a man was banished the estate
from the wife was permitted to sue and be sued,
for she was not under the coercion of her hus-
band, neither was his marital rights affected
by her contract. It said in this case the banished
man is "legitimus mortuus" but this is not so,
for she can't marry so long as he lives.

talk 116
Cott. 102
Roll 147
2 talk 646

2^d Case was where a person affirmed the estate
and is a kind of personal servitude for he
never can return again. Now in this case the
wife of such a person may contract and her
contracts will bind her upon the same prin-
ciple as in the former case. It also holds that
the wife of an alien enemy may contract or
the same person. Again the wife of a man
transitively if it be for 7 years and may bind
herself to her contracts.

Now all these cases his agree on all hands
and so the law. In the next lecture I will
notice the third case.

Lecture August 22. 1869

I will now mention the cases which his said
determine that the great question viz. that a
wife living on a separate maintenance can

cannot bind herself. I will first notice the leading case on this subject, which I contend was decided justly, tho on different grounds from those which I think govern in all cases of this kind. The case was this the wife contracted to live separately and during this time of separate maintenance, she gave a bond and afterwards married Baron Polnitz. This bond was then put in suit ag. her and her new husband and the court decided that they were liable to pay the bond. But it is said this case has since been overruled by a variety of decisions. Now I agree that it is overruled in the last decision on this subject, provided the court in this case of the bond, founded their decision on the ground of separate maintenance and it seems they did rest on this ground.

But I contend if the decision was founded on the covenant to live separately, which is the proper ground, then I say this decision has not been overruled. This covenant to live separately is the proper ground of decision, for it follows in such case that

Henson and Fourn

18 Juny 25 The husband has renounced all right to her person, neither was she under any coercion of the husband.

I will now consider those cases which it is contended overthrow this case in Burnford respecting the bond.

The 1st case is in 2 Bl. R. 1077 Hatcher's Case the wife in this case was seduced and she pleaded coverture, the Off^r admitted it but replied that she had eloped, and this was ~~denied~~ demurred to, and the court said the replication was insufficient. Now in this case the husband had renounced his right to the person of his wife, so he had a right to reclaim her at any time. So this case does not oppose the Barons - for here there was no covenant to live separately.

The next case is in 2 Bl. R. 1195 Law Scott, in this case there was a voluntary separation & alimony maintenance. But there was no covenant which would prevent him from reclaiming his wife. The court had referred to this temporary separation at any time. So this case is not opposed to the Barons.

The next case is in 4 T. R. 766. In this case an action of assumpsit was brought against the wife for goods sold to her. She pleaded recitance, & the plaintiff replied that she was an adulteress, & that her husband had told her. The court said the replication was ill. Now then, was no covenant in this case. Therefore his suit opposes to the Baron's.

Next case is in 5 T. R. 679. This case is similar to the last in this respect, for there was no articles of separation. There was a suit pending for a divorce before the ecclesiastical court and she had a temporary alimony allowed her during this business. She was sick, and I had recitance and the above facts were given in evidence by way of replication. It said, these facts were not sufficient to make her liable.

Next case is in 6 T. R. 664. This was a case where the wife separated from her husband, and carried on a trade, she made a will and died and a suit was brought against her Executor, but it said she could not recover. For there was no covenant in this case.

The last case is in 8 T. R. ~~444~~ and in

Baron and I have

In case I admit from the reasoning at the court, that they intended to overthrow the Baron's case. But I contend this decision independent of objection is not applied to the Baron's case. If this decision is founded on the ground of separate maintenance, the Baron's case is overthrown. But if it is on the ground of a covenant to live separately then that case is overthrown. Now I conceive separate maintenance has nothing to do with the question, because all the effect of it is to free the husband from his liability for her contracts.

In this last case in 8th L. J. I conceive the husband had a right to reclaim his wife at any time, for it was like a term at will, both parties may put an end to it at any time.

The court however in this case decided on ground of separate maintenance, and contended that the Baron's case was overthrown. But I conceive we are at liberty to settle this question in this country as we please.

There is one exception to the rule that she can make no contracts during coverture,

viz. by joining in a fine or common recovery with her husband to convey her own lands.

This she can do and the contract will be binding, and this is the only mode she can convey her land. There is however a Stat. of Hen.⁸ which renders valid certain leases made by her and her husband for 3. lives or 21 years, but for no longer continuance. We have no such Stat. in Conn't. In the U. States we have no such mode of conveyance as by fine and common recovery. But here the wife may convey her lands, by joining with her husband in the common mode of conveyance.

If the wife suffers a fine in her own name, & the husband never disjoins, or objects to it and dies, it will bind the wife. And if she dies he can ~~never~~ avoid it only for the purpose of obtaining his curtesy.

Now it may be asked if a wife cannot make a conveyance of her lands, to commence after her husband's interest in them has ceased? I answer that she could were it not for two maxims of Common Law viz. that a freehold

1. to 13.
2. Henry 3.
3. 16.
4. 22. 229.
5. to 14. 5.

Married and Single

estate can't be made to commence in future but must commence in instant and quod that every remainder must be created at the same time ^{with the} particular estate in upon which it is limited. But here the particular estate was created at the time of marriage.

But I am of opinion that such a conveyance might be made in conveyance for these marriages are done away by Statute.

Suppose the wife should have land come to her by deed, devise, or descent. Now can the husband disagree to it i.e. prevent her from taking it? he is obliged that he can when given to her by deed, but there is no decision which says he can disagree to it, when it comes by devise or descent. But the same reason exists in these cases as there does in case of deed, which is that it may affect his rights, for he may be obliged to pay taxes, which he may think exceeds the value of the land.

A wife can execute a power without her husband. This power may either be a naked one or one coupled with an interest. 1st as to a

naked power - This is every power & authority given to her to dispose of lands or personal property. She can deed away such land in her own name without her husband, and if it is an authority to dispose of them to whom she pleases she may sell them to her husband.

So where lands are devised to her to sell, this is a more naked authority, for she has no interest in it it makes no difference whether this power was given to her before or after marriage.

But 2nd suppose she has not a naked power, but a legal title or interest, as when J. Siles makes a will and gives his lands to his wife to sell, this being coupled with an interest can it be a good conveyance by her without her husband? This point has been disputed, to determine it let us see why the husband is well joined. It is because he disposes of the usufruct. In this case has the husband any interest in the land, has he the usufruct? Certainly not. Here Elementary writes say that he ought to join, and quote

137
147

See 137 p. 1. I see my ne ought not and quote
the same author. The truth is in this case he
was of opinion that he ought, but the three
other judges were opposed to him. Mangrove
says this is a disputable point, but says it down as
a proposition that he has no interest in joining.
but it may be a direct advantage to him and con-
sequently concludes that he is not necessary for
him to join.

Power of the husband to convey away the
real property of the wife.

Now all the husband can convey alone of
his wife's real property is the interest which he
has in it, and nothing more will pass. Not
even if the form of the conveyance is so simple.

So that on his death the wife may enter the
land to a life estate and all the interest the
husband had in her real property.

But if she joins in the conveyance it will
bind her. If an estate is conveyed to husband
and wife during coverture and she accepts it,
although it does not bind her at all, for after
his death she may agree or disagree to it as
she pleases.

So if a husband and wife join in a conveyance that she is not obliged to make, and he dies it will return to her. This is not however void it is only voidable, as she may make it valid by her agreement or by her own act. A mere parol agreement - will be evidence to make it valid.

In this case the title is not void and the parol agreement does not make a new one. *1 Roll 349*
If she accepts, she affirms the lease.

It is laid down but I do not understand it that she is entitled to the arrearages of rent incurred during the life time of the husband.

If the husband was alive it would belong to him, and if after his death she is entitled to the arrearages, it is I think on the principle of the jus accrescendi.

A lease is made by husband and wife rendering rent, now if she agrees to the lease after her husband's death, she must pay the rent. So an acceptance of rent implies an agreement.

Roll 349
Co Litt 262

Suppose a woman was single for years and married, and at time of marriage she owed rent, now this remains her debt and she must

Baron and Feme

1801 331
Jan 25
1802 25

He died with his husband. But suppose you have
accrued during your life and some of it re-
mains due at the death of the husband, in
this case the husband's Executor must pay it.

1802 332

Husband cannot release a contract made
by his wife and a third person before mar-
riage to take effect after his death. If he
wants contract with B that if she will marry
A and then to either him, he will give
A 100. then A can't release B from this con-
tract, because he has no interest in it.

1802 346

A wife may suffer to lose her estate by the
negligence of her husband. Suppose an estate
is given to her and to remain her, provided
certain conditions are performed now if her
husband fail to fulfill this condition the estate
is lost to the wife.

1802 348

But where this condition is annexed
by law, and not by the parties the wife shall
not be prejudiced that the husband is neg-
lect. E.g. neglecting to take the oath of fe-
alty.

In what cases the Husband must join his
wife in a suit.

In all those cases in which the cause of action would survive to the wife, the husband must join her in the suit.

For all her choses due before coverture and her trespasses committed on her lands before coverture, she must be joined with her husband in a suit, and the same might be said respecting an injury done to her freehold, her person or her reputation and that whether the injury was done before or after coverture or they will survive to her.

Sub' 21
1 Roll. 1341
1 ut 507
1 ut 417

The injuries done to her person or reputation he had already considered the action for goods which the husband may sue alone.

14 id. 75
14 Bro. 205
607 410
588
1 ut 90

The reason for joining the wife in these cases is this, that whenever the husband recovers in these cases it is personal estate and if he obtains it, it belongs absolutely to him. but as they are all choses in action, if he does not reduce them to possession during his life they survive to the wife. now if he should sue and obtain a judgment in his own name, and then die, it would survive to his executor, whereas it ought to go to his wife; and by joining her &c.

Knows and knows.

obtaining a joint judgment it will.

We find it sometimes asserted by Elementary writers that if a Court were given to a wife before coverture the husband may sue a Court for it. By this position which is opposed to all authorities is advanced I know not.

There is a case in 3 Lev. 1103 and in Allge 36 which are cited to support the position, but in these cases we find that the Court was actually given ^{to} the husband during coverture.

Case in 1 Lev. 104 is also quoted to show the same thing. All that this case proves is that when the property of the wife was seized before coverture, and converted after coverture, the husband may maintain trover alone for it and this is undoubtedly correct, for as there had been no conversion of the property at the time of the marriage, it vested in the husband. But it is there said that the husband might at his election have joined the wife. 1 Lev. 676. is also cited - This shows that for debts due to the wife before coverture the wife

must be joined with the husband and that
 he debts, who survive & he after his death.
 she either may or may not be joined,
 but in the last case the Chancellor lays down a
 position which I have already expressed my
 opinion upon, and which I understand not to
 be true, viz. that if a legacy is given to the
 wife before or after coverture, it will survive to
 the wife after the death of the husband. L. mod. 117.

It is said that the reason why a wife can
 not sue alone is that Coverture is a disqualifica-
 tion. But it seems that it is not an absolute 39. 2. 127
 disqualification, as she were not in existence;
 in her coverture, where she sues alone in trespass
 for an injury done to her personal property, be-
 fore coverture, can only be pleaded in abate-
 ment. But was the utterly disqualified that
 she had no right, which the law in every man-
 ner acknowledges. Coverture might be plea-
 ded in bar, as well as in abatement. Day 1207

Now this is a strong case for as it respected the
 personal property, which by the marriage vested

Baron and Fane

in the husband. The cause of action could not survive to the wife. It was admitted in that case that should the Defendant succeed, the husband might join with the wife, being a suit at law, and reverse the judgment so as to avoid the judgment as to costs. but the Ct. observed that did not conclude the present question.

Again he said that the wife cannot sue alone because she and her husband make but one person in law. viz. this suit, therefore even the husband could not bring an action without joining his wife in any case, for it requires at least one person to constitute a party.

I take the substantial reason why a feme covert cannot sue alone to be, that the Coft. shall not be vexed with a suit by a person who should the Coft. prevail would not be liable to refund costs, and a feme covert would not, for she has no separate property.

When a debt accrues to the wife during coverture, as if a note on bond is given to her

the husband may bring an action alone upon it, or may, at his election, join the wife. It also if an express promise is made to the wife.

4 mod 146
1 Kelt 319
567
1 vic 403
1 bar 87
1 alk 114

In *debt* it was brought by the husband and wife for work done by the wife, but the court held it would not lie, but the husband should have brought the action alone.

Judge Feine does not see why it would not lie, as well as in case of an express promise made to the wife. But the court in that case distinguished it from the case of an express promise, admitting that in the latter case the wife may join with the husband; but they say that the profits of the wife's labour will not survive to him. The same might have been said had an express promise been made to pay her, and since indeed this reason would be an equal objection in all cases where the cause of action does not survive to the wife, it is difficult to perceive any reason I think why we should consider that case to be law.

In what cases the husband has an election

Husband and Wife

either to bring an action in his own name,
or to join his wife.

A husband can never join the wife in a suit
unless she has in some way been concerned
in the cause of it. It would seem from the
principles that in those cases in which he
is necessary to join the wife, she might as
well be excluded, by a formal plea to that
effect, "she should not be joined," but this is not so.

It may be laid down as a general rule,
that in all cases where the wife or her property
has been the most obvious cause of action,
the husband has suffered no special damage
from such cause, the wife may be joined
with the husband in an action for that cause.

It is evident this rule comprehends those
cases in which the wife must be joined, as
well as those in which she may or may not
be joined. But whenever the person or prop-
erty of the wife was the most obvious cause of
action, and that cause has occasioned no
special damages to the husband, then the hus-
band may at his election either join or not
join, provided the cause of action would not

survive to her after his death.

It has already been observed what these causes are as it respects her as a prop^{ty} according to the wife during the coverture so far as accruing on her services, and for trespass on her land, injuries to the person &c. &c. Hunt 53
140. 116

So if the property of the wife is taken before coverture and converted afterwards, husband may join the wife in an action for it. 1 Mac 206
Hunt 261
102

The reason given for this is, that by bringing an action at law the P^lff. disaffirms that the property is in himself, and here is reflection and detinue for the property of the wife taken before coverture it is said that the wife cannot join with the husband, for the bringing of the latter action is an affirmation that the property is in the P^lff. but if his in the P^lff. no part of it can be in the wife, for it has all been vested in the husband. 1 Mac 206

Suppose in these cases where the husband has his election either to join or not join his wife, he does actually join her and obtains judgment and then dies, what will become of the judgment?

Baron and Feme.

In Eng? There is no doubt but that it will
survive to the wife, on the principle of the
in accendi, but where this principle does
not exist as in France! it may be more doubtful.
I have no doubt but that it may be collected in
the name of the wife but the question is whether
she will not hold it as trustee for the repre-
sentatives of the husband. I think not for I
am of opinion that it must be considered as a
voluntary grant by the husband to the wife.

I see no reason why he should have joined
his wife, since he might just as well have
made a lease, unless it was to make a gift of
the inheritance to her on his death.

In laying down the general rule respec-
ting the cases in which the husband may at
his election join the wife, there was an excep-
tion as to those cases in which there is from
the cause of action a special damage to the
husband. These cases of special damage
are actions *per quod servitium consortium a-*
missum and other *per quod*.

These actions have already been considered, they are the sole actions of the husband and the cause in no other manner except as to the special consequential damage the husband has suffered and the wife cannot join.

Next consider the Husband and wife as Defendants in an action i.e. in what cases they must be sued jointly. And the rule is that if the action would survive against her they must be joined.

If a husband and wife have both been beaten by a person, they cannot join in bringing an action for it. The reason is that the beating of the husband is no damage to the wife but if certain damages are rendered for beating the wife, and certain for beating the husband, he may release the damages as to himself, and take judgment on the part of the wife.

If the husband and wife join in committing a battery I suppose they cannot be joined in a suit brought against them for it has already been observed that for torts committed

Baron and Fea.

by the wife in the husband's presence or com-
pany, he alone shall be liable, for them.

But from what Judge Pease said I should
think a verdict against them in such case would
not have, but in the moderation, for says he
suppose they are sued for battery and it
must be proved on trial that the husband was
not guilty and that the ^{wife} husband was alone
guilty. Now judge ~~not~~ ^{not} judge ~~it~~ ^{it} would not be
imposed against him in such case.

Power of the wife to decide.

Judge Pease believes that a married
woman may dispose away her own property as
well as any other person at common law. In-
deed, she may not so far as to intringe on
his marital rights.

Thus then we will consider this subject
in respect of a married woman, in respect
to her. There is nothing in marriage that in-
capacitates for she has a will and an unden-
dening and accordingly notwithstanding
marriage, she is punishable for crimes, acqui-

by a certain conveyance she may give away her real property, of course she has a will.

But it is said that it is impolitic to allow her to devise, for she may be under coercion, but the same may be objected to other conveyances of hers which are allowed.

It is said that a devise is often made on a sick bed when she is more liable to coercion. It also is the husband liable to coercion in such case.

It is said that in other conveyances she is examined, whether she acts freely. But when she goes into court she will certainly go there with an intention to convey and she will invariably answer in the affirmative.

But further why should his consent be necessary, where no right of his is in danger. But it is said that this doctrine will render a deed by her alone good, which is certainly against law. But I have observed that the reason of her being incapacitated depends upon two maxims in the Eng^l law, which do not exist in this country. Surely she ought to be able to

Baron and Hunt

ward. Those who have done every thing for
I could be sufficiently and in fact make her
property.

Secondly, we will consider the subject on legal
grounds.

The authorities say she can with her hus-
band cannot devise beyond his personal
property. This indeed seems to imply that with-
out his consent she cannot devise his prop-
erty and it is true that it must be assumed that
this concerns his personal property and
not his.

It might be assumed that originally it
was once for wives to enjoy separate property,
accordingly it is said by the ancient authors
generally, that a wife shall not give by will,
for that would be to devise the husband's prop-
erty. But the same authorities say that she
may devise her dress and ornaments after
debts paid, for they are her own.

So that when she has property it appears
she might devise it. So also where the husband
formerly endowed the wife as a common law
his property she might devise alone.

Lyndwood has laid down the same

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position, that when she had property she might
devise. It is laid down likewise that a wife
shall not devise to her husband, for she is liable
to coercion - clearly then it implies that she
may devise to others.

When personal prop^y is given to a wife 1. 1. 114
with 709
1. 1. 190
303
515
for her sole and separate use she may devise it.

It is said a man may not devise to his young-
est son - it plainly implies he may to any other;
his custom is confined to particular places
and in the indeed, a wife had no real prop-
erty; but till the reign of Hen⁸, no person
male or female could devise even that. So
that it is clear that whenever married women
have property, they may devise it independent
of Statutes. But his said courts of Chan^y only
have given effect to the devises of the wife. But
these courts move go in opposition to the law, for
the moment the Stat. had passed it they desis-
ted from considering the wife as realty, and
plainly com. law is as binding as Stat. law.

But to pursue the argument in another

Saxon and French

point of view. How then if not seductive to her
supper service and return to her, and accor-
dingly we find she may devise things in action.

1 vol. III.

So it is clear that custom is not considered
as creating a disability to devise. If these
principles are correct we should say a wife as
executrix might devise, for the property cannot
be say to the husband, and this on examination
seems to be the law.

from 340

Edw. 1. 104

412

214

But he asked why don't we find in
some part of the law that a woman may de-
vise real property? I answer from the feudal
times to those of Henry 8 no person could devise
real property and this Stat. permitting it ex-
actly disables married women from devising
it. The law is, previous to the feudal system,
among the Saxons, a wife might devise real
property, for they had adopted the law of H.
Romans, and this was permitted amongst them.
And further, when from the conqueror left to some
particular districts their customs, so we find it is
the custom in some particular districts, or women
to devise real property; which shows that this
was law before throughout the country.

2 vol. 15

11

Lev. 91.

In Connecticut we have a small number of
 married women to devise their own hospital.

For further
 remarks on the
 case of married
 women to devise
 out - see law and
 medical notes - see
 2d volume - 1850 p. 5.

Baron and Some

I will next consider how far marrying is a re-
vocation of a will made by the wife before mar-
riage.

It is said in the books, that a marriage is a
revocation of any will which the wife may have
made before marriage.

I agree that in many cases it is a revoca-
tion, or rather that it prevents the will from
having the intended operation.

So if a woman should will away her per-
sonal prop^y in hope^{ful} and then marry, this
would revoke the will for there is no property
for it to work upon, because by the
marriage it absolutely becomes the husband's.

Vide Fideles
109th

I would say that it will revoke the will when
by operation of law the property would have gone
to another i.e. when it would have gone to the hus-
band. So that if she had devised any real

Real and Personal

real property - it will now be covered by the mortgage.

But if she should will away her share in action, then marry, this did before they were collected by the husband, I conceive the wife would be good to the law did not vest them in the husband till they were collected.

Wife's Share Properly

her property may be given to the wife both real and personal, as her sole and separate use, &c. in this the husband has no interest whatever.

This property may be given to her either by devise or deed and also before or after marriage.

It may be given to trustees for the separate use of the wife, and her trustees have no interest in it nor control over it for she may dispose of it as she pleases.

Formerly it was the custom to give this property to trustees, but of late has given to the wife directly.

1854

1854

1854

It has now made a question whether trustees were not necessary to prevent husbands and others from taking it, but is now settled.

that they are not necessary, for the husband is ^{not} ~~not~~ considered as trustee for this purpose.

There are no technical words necessary to create this species of property for the wife. Any words which convey the party's meaning are sufficient.

Is this species of property of the wife, limited to her contracts made during coverture? It is settled that it is by means of a receipt in a court of Equity, or in a court of law.

Suppose the wife advances her own separate property to redeem her husband's mortgaged lands.

Now if she takes a receipt for this property, she will be considered as mortgagee in Equity in the husband's estate, and the heirs will be obliged to pay her the money before they can get the land.

So if she lends her husband, her own property for any use whatever, and takes a note, bond or receipt for it, she will be considered as creditor of the husband and can collect them after his death occurs, if she takes no note or bond &c for it. In that case she is supposed to have advanced this money, for family purposes.

March and June

22. 11. 82.
- 341

of an agreement entered into between husband and wife respecting her separate property, that it shall be paid over to her husband can be enforced in a court of law."

There is one case which seems not to be founded on principle is this a wife calls in her separate property and places it out on interest in her husband's name, and the husband dies. Now this has been considered as a gift over to the husband and of course I suppose his executor will have it.

It is not perfectly settled whether a wife can convey her separate real property without joining with her trustee, supposing the property to be in trustee hands, but it is clearly settled that she may compel her trustee to convey it.

It is also clearly settled that she may dispose of her separate personal property without joining with her trustee.

If she contract debts her separate property may be liable for them.

She may in some cases sue by her proper name.

And in case of a separate maintenance, it
be neglects to pay her she may sue her husband
in Equity in her own name.

Settlement made by a minor on the wife
before marriage.

Now tis a general rule that a minor may re-
-vise his contracts. But in this case of settle-
-ment they are binding in Chan^y; and this settlement
may be considered an incident to the marriage ^{or M. boy.}
contract, which a minor is capable of making.

It is to be remarked however that they are
not of course binding, for a court of Chan^y
will enquire into it; and if he has made an
improvident bargain, they will not bind him.

As to a jointure made by a minor, this
is also good unless it evidently appears
he has made an improvident and unreason-
-able one.

Marriage settlement made upon the

Baron and Hume
wife at the time of marriage.

It is settled that no man can make a voluntary settlement to another man, which will be good against creditors, it is void as against them and is immaterial whether they are prior or subsequent creditors. The only enquiry is whether the grantor was indebted at the time of making the settlement - no matter whether there is any fraud or not in this conveyance.

But these marriage settlements go on very different grounds, for there is a valuable consideration here, and it will be good against creditors. However this settlement must not be extravagant or unreasonable.

It is also limited in its operation, for he can settle it only on his wife and her issue. He cannot limit it to his wife and then to his collateral relations - for after the wife is dead - creditors may take it.

2 M. & C. 504
6 M. & C. 504
354
24.6
1 vol. 193

Marriage Settlement made after marriage.

Now is a general rule that a settlement made after marriage is not good as against Creditors. But if it was made in pursuance of an agreement entered into between Husband and wife before marriage, it is as effectual as tho it were made before marriage.

So also is good where the wife has received a large portion of property from some relation, unless there was a sufficient settlement made before.

So also such settlement after marriage is good where there is property of the wife in the hands of trustees, and the trustees refuse to give it up unless the husband will make a settlement on the wife.

2 Atk 420

Amblar 14

Marriage Settlements made after marriage. Then are voluntary grants, and not good as against creditors only in the three cases first mentioned.

Par. Ca. 22

Cowp. 278

2 Bro. 146

Baron and Feme

Relh⁴ 156
3402 Jan¹¹
1791

If a settlement of real property is made on articles to live separately, she can only have the use of it; but if it is given to her sole and separate use. It then her property absolutely.

Settlement made on articles to live separately. But suppose notwithstanding this the wife becomes a pauper - in this case the husband is still liable to maintain her. There are still some doubts as to this principle.

200.603

Husband takes a mortgage to himself and his wife. Now what becomes of the interest when the husband is dead? Why on the principle of the *jus accrescendi*, it survives to the wife. The right of the wife however must yield to creditors.

Would it survive to the wife where there is no *jus accrescendi*? I think it would, be a voluntary grant to the wife.

If a married woman joins with her husband in mortgaging her own estate, is a valid mortgage and she is a creditor to the husband.

Suppose husband and wife should covenant to convey her lands, would she be bound by this covenant? It seems she would not, for nothing short of a conveyance will bind her. There are different opinions on this subject.

We cannot however we have decided that such a covenant is binding upon her. 1804. 375. 2 per 61.

If a wife mortgages her own lands, to accommodate her husband now on his death she shall have recourse to his personal estate for the purpose of redeeming, and her claim will come before his heirs, and after his creditors. 1804. 375. 1107 1207. 311.

However if it can be proved by parol testimony that she never objected any interference for thus assisting her husband. This will prevent her from taking his personal property to redeem. 1804. 375. 1107 1207. 311.

Raven and Howe

2. 11. 384. To also the case would be the same if she should mortgage her own land to secure that of her husband.

Settlement of the wife.

The wife by the marriage gains the husband's place of settlement. If the husband has no place of settlement the wife gains none by marriage, and if she becomes an expense she must be maintained at the place of her maiden settlement.

2. 11. 384.

It has been a disputed question whether if the husband has no settlement and should run away from his wife, she could come to her maiden settlement. I conceive she may, says the judge.

at marriage before the Stat of 26 Geo. II enacted by a person not qualified to marry was a sufficient one to gain a settlement. It was now by that Stat.

I think the law as it stood before that Stat. is our law in Connecticut. And a long citation together as man and wife is proof

Baron and Feve. 22

85

that they were legally married.

800321

In court I think a wife may gain a settlement by cohabitation i.e. by living in a place 6 years with her husband.

Testimony of Husband and Wife.

It is a general rule that husband and wife cannot be witnesses for or against each other. This exclusion of testimony extends to all other relations; the influence which near relations may be supposed to have on their minds may effect their credit but does not render them incompetent to testify for or against each other. 42.2678 2nd 1831

The reason for not permitting husband and wife to testify for or against each other is not on account of their connexion of their interests, but to avoid the disagreeable consequences which might result from it in the interruption of domestic good will. Hence if the parties all agree to admit them, still the court will not permit them. At the same time the confession of a party himself is more convincing than any other testimony, and there is no objection to the 109 1831

Law and Equity Pleas and Pleadings
a definition of it.

There are some exceptions to this rule. In Eng^d a wife or husband is allowed to testify against the opposite party in case of prosecution for high treason. This case is so important that they say, private must give way to public good.

Again, as laid down by Elementary writers very commonly, that when the husband is prosecuted for a battery or other injury done to the wife she cannot be a witness, whilst at the same time all the cases I have seen are the other way. In the famous case of Lord Audley, she was admitted to testify, and I have seen no case contrary to this decision.

Rights of defence between husband and wife. The husband may justify a battery, or even a felony committed in defence of his wife, & the privileges of the wife as it respects the husband are the same. The just meaning of this rule is that the husband has a right to do the same in defence of his wife, that she might be

See in
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self do, and vice versa.

Thus when a man found another attempting to commit a rape upon his wife and instantly killed him, he was justified, for the wife might have done it herself had she possessed the power. But when a man found another in the act of adultery with his wife and killed him, this was held manslaughter in the man not withstanding the enormous provocation, and the reason was the wife herself might not have killed the adulterer. These cases sufficiently explain the principle upon which all similar cases depend.

The wife is allowed one oath ag. the husband and also the husband ag. the wife, and that is when one would compel the other to give sureties for good behaviour. In this case the wife is a witness to swear that she is afraid of her life, or some great bodily harm, and the husband is admitted to swear the same ag. his wife.

It follows from the principles already laid down that a husband may make a good devisor

Baron de Spon

to his wife. But it was for a long time made a question whether he could make a good steward. His own master he was, but his fellow that he was.

Celebration of Marriages.

All well regulated governments require that the contract between the sexes to marry, should be duly and orderly celebrated. And untill there has been a celebration of the marriage there is not in point of law, any husband or wife, nor is either entitled to any of the privileges of a wife. A gain is no right to the person or property of B, neither could B, on the death of A, be entitled to receive any other advantages in A's estate.

Previous to the Reformation the business of celebrating marriages had fallen into the hands of the clergy, under the idea that marriage was a sacrament, the managing of which exclusively belonged to the Ecclesiastics.

At the Reformation, the doctrine that marriage was a sacrament was considered as

not well joined. However the clergy of the Church of Eng^d continued as officiating as ever in the celebration of marriages. Their plainness would not do it by virtue of their clerical character, as they preached the gospel and administered the sacrament. But being authorized in this practice sanctioned by constant usage, it was considered as the common law of the land that a marriage could be duly celebrated only by those who were in a sacred office. Thus it continued till the establishment of the commonwealth in Eng^d, when an act of Parliament was made declaring that marriages should be before a Justice of Peace.

At the restoration of Kingly government under the reign of Charles 2. the clergy were restored to their office of celebrating marriages; and by Stat 26 Geo. II it was enacted that all marriages had contrary to the requirements of this Stat. were absolutely void "to all intents and purposes."

By the Stat regulating marriages in Connecticut no person can be joined in marriage unless their

Bacon and Stone

intention of proceeding therein shall have been published in some public meeting on the Sabbath, or on some fast, thanksgiving or lecture day in the town or parish where the parties, or either of them, ordinarily resides; or unless instead thereof such intention shall have been placarded and fixed in public view, on some door or part of the meeting house, eight days previous to the marriage.

All the ministers and justices of the peace are authorized to join persons in the counties where they dwell. Coroner and judges of the inferior court have power to marry ^{up}throughout the State. But none of these persons shall unite any in marriage till they shall have seen published in the manner above directed, nor unless he is certified of the consent of the Parents or Guardians, if the parties are to the marriage (if they are under the age of Parents or Guardians) under pain of forfeiting for every such offence the sum of twenty dollars, one moiety to the

partly giving all the other to the State.

The Stat. expressly prohibits all other persons from celebrating marriages.

The question has arisen respecting which there seems to be much difference of opinion viz. whether a marriage celebrated by a person not qualified by Stat. is void, and the issue of such marriage bastards.

It is not contended but that the person so celebrating is liable to a punishment for disobedience to the Statute, in if a clergyman should celebrate a marriage in a different county from that in which he is settled, he would be liable to a prosecution. But would the marriage be void?

I would remark that being a clergyman gives him no authority in a county in which he is not a settled minister. He has no better right to marry out of his county than a Hogday would.

There can be no doubt that the express words of the Stat. have rendered marriages in Eng. not celebrated as the Stat. direct void.

Bacon and Some

But I apprehend that by provision of the common law marriages celebrated by persons not qualified, or in a manner by law forbidden, are valid. The conduct of the parties concerned has rendered them obnoxious to the penalties of the law; but such irregular conduct is not a ground for impeaching the validity of a marriage.

While the civil war during the reign of Charles nothing can be found on this subject, for until that time it had not been supposed that any person but one in holy orders could celebrate a marriage. The mode of pleading was per perbaptismum in sacris ordinibus constitutum. After this period and before the Statute 26 Geo. 2. several cases may be found which will give light on this subject. During the Commonwealth the power of celebrating marriages was given to justices of the peace and they were the only officers whom the law recognised.

as possessing authority to marry; yet during the existence of this law it was determined that a marriage celebrated by one in holy orders, the not a vid 24 justice of the peace was valid.

After the restoration the power of celebrating marriages was committed exclusively to the church of Eng^d. and yet we find the court of King's bench issuing a prohibition to the spiritual court, to enquire the validity of a marriage had in the face of a separate congregation was questioned in said court. 3. dec. 376

So too we find that a marriage by a preacher in a separate congregation, who was a layman, was recognized as valid, for on the death of the husband, the wife and children were entitled to their distribution shares of his property; but had the marriage been a nullity no such distribution would have been made, as the children would have been bastards. 1. alk 475
3. alk 170

Also we find that such a husband & wife may sue for a debt due to her before mar-

Barton and Rome

ing but had the marriage been a nullity,
he had been not have insured that the
pretended husband should have joined in an
action with his pretended wife.

MS 437

Cont 47th

again we find that a marriage by a Popish
priest was held valid, and that in the strongest
possible way. It was, that a man had been
married by a Popish priest, who by law had no
authority to marry, and the person so mar-
ried, during the life of his wife married again.

This matter was brought before the Ecclesiastical
Court and the second marriage was dissolved
upon the principle that the first marriage was
valid. If the marriage was dissolved the
husband was free to marry in the common law court
of criminal jurisdiction for bigamy and con-
viction. This seems to me irrefragable proof
that the common law did not consider a mar-
riage celebrated irregularly as void, and
surely it would be very inconvenient, after

certainly unjust to an innocent family a heart
 broken marriages ¹⁸⁰⁰ created in a country like
 ours, where many marriages are celebrated in
 a manner different from that prescribed by law.
 and this is not done from a rebellious spirit
 in opposition to law, but arises from conscientious
 scruples, erroneous indeed, but honest.

I know nothing in our Statute similar to
 the Declaration in that of 26 Geo. II that a
 marriage, lawfully celebrated shall be void
 to all intents and purposes, nor altho' it
 is uniformly urged by Town, that if a marriage
 is held in any other way than that pre-
 scribed by, that that it is void, yet I never
 hear it urged that if a marriage took place
 without publication or consent of parents
 such marriage would be void, but the Statute
 expressly forbids the clergyman or magistrate
 to celebrate a marriage unless then require-
 ments are complied with. If the prohibition
 in the one case renders the marriage void, why

Raron and Sam

not in the other? The Legislature are magis-
trates and as such, previous to marry when
there is a puttishment and consent of parents
is there not a large and a magistrate in any
case.

I know it has been said that in one
case there is a result to a fine, and in the
other there is not. I do not perceive the force
of this reasoning. Surely punishment can never
legitimize the offence committed, in case we sup-
pose the object of the Stat was to guide the
Legislature the alternative either to marry
without puttishment or to pay the penalty.
but that was not the design of the Stat.
the manifest intention was to prevent the
 offence, and in case it was committed to
punish it. But suppose the punishment
of the offence would legitimize the marriage
celebrated without puttishment or consent,
the inference I suppose would be that a
marriage celebrated by a person not quali-
fied would be valid for the there is no penalty

affixed by the Stat to the offence of cele-
brating marriage by persons not qualified, yet
disobedience to a Stat is a misdemeanour at
Common Law and punishable as such.

Age at which Marriage may be contrac-
ted.

The age when persons are able to contract
marriage is in males fourteen, in females
twelve years. Minors may indeed marry at
any age, but the validity of the marriage de-
pends upon the agreement or consent
of the parties respecting it when they arrive
at the age which qualifies them to marry.

So long as the privilege of disagreeing to
the marriage continues, it also continues with
the other two of greater age. Thus if the male
is thirteen years of age and the female but
ten - the male ^{can} refuse to consent the mar-

Marriage and Fem.

66.22
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p. 44.
riage by disagreement, till the female shall have
passed the age of 12 years is. The female may
disagree to the marriage when she arrives
at 12 and the male may do it at the same
time.

17. 13.
A wife cannot be divorced unless she is
nine years of age at her husband's death. And
the reasoning why she can be divorced at
that tender age is a very singular one.

If a wife whose husband is ten or 15 years
of age has a child it is a bastard. I have never
heard of any marriage in this State where
the parties have not arrived at the age of
discretion. I think it probable that
such premature marriages would never re-
ceive any sanction from our courts.

Which they would be well as against
sound policy and contra bonos mores.

Of Unlawful Marriages, Divorces, & Annulments.

From the Stat. 52 Hen. 8 we see to those who may intermarry. That Stat. declares that no prohibition - i. e. law except, shall impeach any marriage. This amounts to a declaration that a marriage between persons so nearly related as to be within the degrees of kindred, prohibited by the Legislative law is void.

All marriages prohibited by the law of God are voided; but the Stat. does not specify what marriages are by that law forbidden, so that we must resort to the adjudications of courts to know what the construction of the Stat. respecting marriages forbidden by the law of God has been.

1st Where there has been a prior contract to marry, and one of the parties refusing to perform, marries another person. The party to the prior contract living, it has been determined that such a marriage is invalid and void.

J. Baron and Home.
H. and J. H. H. H.

the subject of a wife.

2nd When a man marries a wife having be-
fore been married to another wife, and the first
marriage remaining, such second marriage
is void.

3rd Intercity m. has a marriage void.

In case of a marriage when there is a former
marriage existing, the second marriage is
considered null and void then is
not a marriage; the parties are not husband
and wife de facto and need not a divorce to
dissolve the connection.

But in case of prior contract or intercity
the parties are considered as husband and
wife till dissolved, that makes the marriage
void at once.

As to relations which are according to
the Levitical degrees, it may be inferred from
a great variety of decisions that all marriages
by persons related in the ascending or descending
line are void.

The prohibition respecting collateral
relations does not extend beyond the third

degree, computing by the rule of the civil law, of course a man cannot marry his niece, or aunt, her nephews, but first cousins may marry being related in the fourth degree. Relationship by affinity is considered within the Levitical prohibition, is much as that by consanguinity.

The husband is related to all the blood relations of the wife, and the wife to the blood relations of the husband.

But the blood relations of the husband are not related to the blood relations of the wife.

Hence John and Sam Stiles may marry Betsey and Susan Howe. Or if J. Stiles should marry Polly Camp and Sally Stiles his sister should marry Tom Stokes, and John and Sally should die. Tom Stokes and Sally might in-

termarry - or in other words, the a man may not marry his wife's sister, yet he may marry his wife's brother's wife.

I apprehend that incestuous is not now considered as rendering a marriage null.

Baron and Aene

The impotency which nullifies a marriage is not a defect previous to the marriage, & not that it may have been occasioned after it by accident or infirmity.

The parties in all cases of illegal marriage may receive a sentence of divorce a vinculo matrimonii in the spiritual court, and in such event the marriage is declared void ab initio, and the spouses are bastards.

It should be observed that it has been determined that marriage with an illegitimate relation within the prohibited degrees is void. This determination seems strange, but to be a principle of the common law, which does not require recognizing a relation of an illegitimate person except the direct descendants of the illegitimate.

Divorces a vinculo matrimonii are granted in Eng^d only for causes which existed previous to the marriage, except by act of Parliament.

The spiritual court has power to grant Divorces a mensa et thoro for subsequent causes.

This operates to separate husband and wife but does not dissolve the marriage. After such divorce neither of the parties can marry whilst the other is living, nor does it deprive the husband of his marital rights as it respects the property of his wife.

He is entitled to the usufruct of her real estate and if a legacy is bequeathed to her it is his. But when in such circumstances he has attempted to dispose of a term for years in right of his wife, the court of equity have prevented him by an injunction. note 463
but 463

The causes for which divorce a mensa et thoro are granted, are adultery, cruelty, and well grounded fear of bodily hurt. In all cases of divorce a mensa et thoro, the issue are not bastardized, and the spiritual court is vested with power to compel the husband to allow the wife a maintenance called her alimony and to recover this she can maintain a suit against her husband. 1 Chy. Ca. 164
12 Mod. 185

Parties are sometimes divorced a vinculo and

Baron and Fane.

revised, for superannuation, by Special
act of Parliament.

The law respecting divorces in Canada!
is a very different system from the English.

The Judicial Court is vested with power to
divorce for four causes, viz. Fraudulent con-
tract, adultery, wilful absence for three
years with total neglect of conjugal duties and
seven years absence unheeded of. In the last
case it has been held that a divorce is not
necessary to enable the party to marry again,
the absent party in such case being considered
as dead.

A singular case once occurred in this
State upon this last clause - a man had been
absent one unheeded of seven years, his wife
married, and he afterwards returned and ap-
plied to the Legislature for his wife. Their
decision was curious, they left to the choice
of the wife which husband she would take.

and he chose the former husband!!!

The construction of the term fraudulent contract has by a decision of the late court of Errors (now abolished) been confined to the single case of concealment of intemperance, which is not mentioned in our Statute as a cause of divorce. The practice of the Superior court before this decision was very different from this.

True indeed they granted divorces for intemperance on the ground of fraud, but they also granted divorces where the fraud was such that it would vitiate any other contracts.

Certainly if nothing more were meant by the term fraudulent contracts, than intemperance it was a very awkward expression to convey that precise and finite idea affixed to the term intemperance. If the legislature meant the same by fraudulent contract as the term ordinarily imports I think the precision of the Stat, not unreasonable.

It seems hardly consistent with justice that contracts which respect ordinary

Breach and Fraud

matter should be treated as void, whilst the most important of all engagements should be deemed inviolable, when obtained by cheat and imposture. When a man by false promises gets his neighbour's property into his possession, the contract is not only void, but in many instances the transaction is felony.

The common sense of mankind recoils at the idea, that where a man by the same abominable fraud obtains the person and property of an amiable woman the law should protect and give the same efficiency to the contract as if nothing unfair had been practised.

The truth is that a contract which is obtained by fraud is in point of law no contract - the fraud takes out of existence whatever foundation of contract there might have been. A marriage procured without contract can never be deemed valid. There is no more reason for questioning a marriage procured by fraud than one procured by force and violence. The consent is totally wanting in

The former, as well as in the latter case in the view of the law.

The true point of light in which this ought to be viewed is, I apprehend that the marriage was void at initio. But still it is necessary to have a divorce by the court, since the marriage has been celebrated, that all concerned may be apprised that such marriage has no effect, and is upon this principle that divorces, contracts and partly obtained void. all the apprehension that is created in the minds of conscientious men of the illegality of separating husband and wife is dissipated if this view of the subject is correct, for they never were husband and wife, consent, an essential ingredient to the contract was wanting.

The case of adultery which furnishes ground for a divorce in the adultery known to the common law as understood in the spiritual courts in Eng^d and in which a married

Law and Form.

never has illicit connection with any other person whether married or not. This is different from another kind of adultery punishable by our Stat. with whipping, burning in the stocks with the collar, and the wearing of a bauble about their necks & coat of garments whilst they continue in this State. This has sometimes been called Connecticut adultery and can be committed only by or with a married person.

When a divorce takes place for this offence (for where the wife is the innocent party says the Statute) the wife is on the death of her husband entitled to her dower if her husband was the guilty party.

With respect to three years wilful absence it has been determined that if a husband turns his wife out of doors, and so abuses her that she cannot safely live with him and she departs from him, this is a wilful

absence on the part of the husband.

In all cases in which the husband is divorced the divorce is a vinculo matrimonii and in no case is the issue bastardized. The children belong to the husband but they cannot be taken from the wife till they are seven years of age.

The court when they divorce on account of the fault of the husband, hath a right to assign to the wife as her estate absolutely and forever, a part of the husband's estate not exceeding one third, whether it is real or personal.

When personal prop^y is assigned by making out a Schedule of the property specially, and decreeing that it shall belong to the wife - the decree vests the property indubitably in the wife.

If the estate of the husband consists of money so that there can be no specific assignment, the court ascertain the

amount of property in the best manner they
can, and then decree that the husband pay
the wife such a sum, and on failure lay
him under a penalty, which is recoverable
in the common law court, without any
liability to be enforced by a court of Chancery.

If sufficient personal property is not
to be found and the husband has real
estate the court assign some particular
piece or pieces of land to her by metes
and bounds, and such assignment vests
a fee simple of such lands in the wife,
and it is to be remarked that the wife's
right to dower on the death of the hus-
band from whom she is divorced is not affec-
ted by this assignment of property to her at
the time of the divorce.

This assignment of property is made to
her to her support during the life of the husband.
It is absolute since her by that

Marriages within the Levitical degrees are

prohibited by our Statute and considered absolutely
void, and the issue is illegitimate without the
intervention of any divorce of the Parents. Since
a divorce in such cases is never had the Statute
having by express terms rendered it impossible
that persons standing in such relation should
contract a marriage, and having made the act
of attempting to marry, or having consent knowl-
edge of each other subject to severe punishment.

There are 2 prohibitions that are removed
by our Statute a man may marry his wife's
brother's daughter, or his wife's sister's daughter,
i.e. a niece by affinity. These two were omitted in
1750 and 1793. The case of a man being prohib-
ited to marry his wife's sister was omitted.

Whenever any other cause of divorce than
those already mentioned exists, application
may be made to the Legislature and it is an un-
common thing for them to grant a divorce for

Barth and Sons

and with grounded fear of bodily
harm.

The legislature divorce a vinculo matrimonii
as a means of doing so they judge most proper
they also when they deem it proper allow
the wife alimony.

Addenda.

1st After enacting the Act of distributions a question arose whether the husband must distribute to the next of kin as other administrators were obliged to do - To settle this question the Act 29 Edw. 3. was enacted.

2. A remedy granted to a feme sole, the married, and during the coverture, in case she dies the remedy belongs to her as husband, and not as administrator; as to arrears before coverture he is entitled to them only as administrator by the common law, but by Stat. 31 Hen. 8. such arrears are given absolutely to her.

Comm. 3^d
H. 8. 41

3^d In a case 2 per. a question is made whether the Executor of a husband is entitled to the share of his wife in the death of the husband who had killed on the wife a competent jointure, it was determined that they belonged to the wife; the distinction I apprehend to be this when an estate is killed as a jointure it does come, but some shew it as a purchase of the share of the

My dear Ann

16. m. 187

12. 11. 118

75

57

he did her wrong, or in his own right as husband,
and it was adjudged that he held such term,
and that she, as husband, and need not in-
terest of the same. This case is cited in Hob. 13
There are cases in which a different doctrine
is held.

1111
Lanc 113
2 Freem. 62
Salk 145
1111 18

Cases cited in margin from Cro. Ex. Rep. are au-
thorities to prove that a husband's lease for a
certain number of years to commence immediately
on his death & a term of years belonging to
his wife is valid.

Cro. Ex. 287
Rep 14

4. Term lease for twenty years unexpired, the
husband leases the term for ten years and dies,
and that before the expiration of the ten years,
the executor of the husband has the rent for the
residue of the ten years, and the wife for the
residue of the term.

1111 259

1. In Cro. Ex. 205 - there is an authority which
proves that an action on a promise to a wife to

Deed not done

may to her so much for her services can be main-
tained in her name and her husband's, it is
manifest that she has no possible interest in the
thing promised for it belonged to her husband &
she might have brought the action in his name
at once.

2nd The husband may in an action for a battery
on himself in the same declarative demand dam-
ages for a battery on his wife per quod conser-
tu in carnis.

11 Rep 68 1st A wife is fined for a trespass, riot, or other
offence; such fine shall not be levied on the
husband.

12 Rep 499 2nd The debt of the wife contracted while she
was discharged by bankruptcy of the husband
and in case of his death will not survive ag-
ainst him.

3rd In 1 W. 114 there is a case where a married
woman who had a large personal estate; she

also and left a grandchild a pauper, in which it was resolved that it must maintain this grandchild. This case is not analogous to the general law that the husband is not obliged to fulfill the duties of the wife after her term is at an end.

4th When an action is brought against a husband and wife for a battery by both and the husband is found ^{not} guilty, and the wife guilty, they are ^{jointly} and ^{severally} liable.

1st The 6th int^o 17th is an authority to show that a woman who elopes with an Adulterer and has thereby forfeited her dower, is received again by her husband, she shall have dower and he is liable for her contracts for necessaries.

1st Settlement of property upon a wife by act of legislation does not affect the rights of

Bacon on Husb.

husband as a necessary wife there is a covenant
on the part of the ^{wife} to be of the wife or husband
to maintain the husband.

But such a covenant have other direction re-
spect to maintenance is inevitable will seem
to be understood by all lawyers and judges as well
the law the wife, that in all cases of separa-
tion where the separation rested upon an agree-
ment that each of them had the power of
directing a separate maintenance. Some late
decisions have reversed this doctrine, questionable.

2nd Where separate property has been provided
for the wife by articles previous to marriage, if
such wife elopes from her husband and cohabits
in a state of adultery, yet upon a bill in chancery
by the wife for a specific performance it will
be decreed ^{decree} against the husband.

3rd The *Leslie* case in 5 mod. 22 is an authority to
prove that a husband after an agreement between
himself and his wife to live separate, he cannot com-
pel her to cohabit with him. The court held
such contract to be binding upon both, until
they had dissolved it by agreeing to live together.

4th In Mich. Reports 73 there is an authority which proves that a deed by a husband in which he agreed to allow his wife a separate maintenance was confirmed by a decree of court.

5th A husband gives a bond before marriage to leave his wife with a certain sum if she survives him. It was decided in Chan. 1st to be paid before other debts. Mich. R. 232.

6th The profits made by a wife of her separate estate are at her disposal. Mich. R. 235.

7th In y and 68 70. 79 there is an authority to show that property devised to a feme may be holden to be her separate property, the intention of the Testator being fairly understood taking the whole will together, although it was nowhere in the will declared to be his intention.

1st A feme covert who with husband becomes a fine of her lands with warranty is liable on the covenants of warranty. The deed of a feme covert rel

all the her services are the meritorious cause of the right of action, and in that case the husband must sue alone. It would be an authority to prove that on an implied contract for work done by the wife, the husband cannot join the wife.

2.nd In the case of *Bright v. Biddley* in the 2 vent 195, the judges differ respecting the question whether the wife could be joined in an action of trespass quare clausum fregit on the wife's land. The decision of the question I apprehend depends upon the nature of the injury, if the trespass affected the inheritance by doing damage to the houses, destroying the trees or plowing the soil, she might be joined, for in such cases the action will survive to the wife on the husband's death, but if the injury was to the emblements, it would not be necessary to join the wife, for in that case an action would not survive to her, yet her property being the meritorious cause of action, the husband has election to join her or not.

3.rd In *Cur. Jac. 71* we find it said by the court in a

Baron and Feme

case when a promise was made to a feme covert in consideration that she would cure such a wound to pay her £10, that if the Baron dies such sum of m^o should remain to the wife. This is analogous to some modern cases when a legacy was given to the wife during the coverture and not collected, and the baron dies, the right to recover it survives to the wife. It is difficult to discuss the principles on which such decisions are founded, for there can be no question but that the husband may sue without his wife and recover all the claims of the wife which accrued during coverture. And in the principal case the husband was conventionally entitled to the services of his wife.

It is true that by the banking of the courts when there is an express promise to the wife, the husband may join the wife, but in fact cases do not because the wife has the smallest interest therein.

4. In the case of 397 there is a case of an estate in reversion granted to Baron and Feme and

In the case of the Baron and Fane the Baron brought an action in his own name against the tenant to recover damages for not repairing the house according to the covenants in his lease, it was objected that the suit ought to have been in the name of both Baron and Fane as both held an estate therein, but the court held that it was well brought. The words of the court are, the action being, brought for damages only it might be brought in his name only. The finding is that the wife is well brought is correct, but not for the reason given. The truth is an estate is given to the wife, it is not an estate for life in the husband and wife with remainder in fee to the heir of the Baron and according to the well known rule in Shelley's case when an estate is given to a man for life, and the term his heirs are added, it is a fee simple in fact, the words heirs being a description of the quantity of the estate given, of course in this case the husband took the whole estate in fee and the wife took nothing, so that the suit could not have been brought in her

Barth and Anne
married together with his

1st That the wife of a feme covert ^{is valid} so far as
it respects things in nature strict and that her
husband may be made executor or Brooks.
Sept 25th 1796.

2nd A feme covert may devise her lands to her
husband when it is the custom of the manors.

There is another case in Brooks decision p. 13. That
a feme covert might devise her lands where
by custom lands were devisable, but could not
devise them to her husband, because the devise
being in his favour it might be presumed to
have been done by coercion; but there was no
objection on the general ground of incapacity
resulting from a state of coverture.

2nd case
6 de 5

2nd To a case in Ambler 677 where the husband
was verum tenor that he should have power
to devise his real prop^y and she did so devise,

but it was holden that such devise was void, for
by 24th Hen 4th she was rendered incapable of
devising real property, and that the husband
could not remove the disability created by that.
Many authorities were produced to show that the
husband's agreement had rendered the wills
of wives valid, the court observed that all the
cases were of wills of personal property and so
that there could be no doubt but that an hus-
band could give his wife power to devise
personal property, but not real because the Stat^{ut}
forbade it. This must be conclusive that the com-
mon law never created any disability in a wife to
devise, any more than in any other person; for
if it did the will of the husband could no more
remove a disability created by com law than
one created by Statute.

1st If husband promises his wife that if she
will sell her lands, will let him have the profits,

Bacon and Tame

he will leave her to that amount. That the
such Executory promise is not binding upon the
husband, yet if the husband should give a
bond to a third person in trust for his wife in
performance of such promise, such is not prob-
able against creditors.

2nd 148

2nd A gift to the wife for a charitable cause mortis is
good.

1st 11th 111

Chas. 118

3rd An agreement by husband and wife previous
to marriage is not extinguished by the marriage.

vide. ante
page 83.

4th According to Lord Keble of Horse and Hen-
ting, it was held by the court that marriage
was a countermand of a will of real property
made by the wife, whilst Till and Gold appear
in the same case, it is stated that Anderson
considered marriage by a feme a countermand
of her will, the other judges held indeed
that the will was void, but it was because
at the time of making it she was incapable
of disposing of property by reason of the Act
of Henry 8.

11. 11

5th A settlement made by a woman before mar-

riage of her estate to her liberal use without
the knowledge of her husband, will not bind her.
him.

1st A wife is a wife to prove her child as
said

Mar. 27

2nd A wife cannot be a witness for or against
her husband, altho all parties consent.

3rd altho it has been frequently said by judges
that the determination in *Baron and Anne*
that her wife was a good wife is an informa-

See note
85. 84th

tion against him, in *perpetuum* was not law,
yet I am not able to find a single decision in
point against that ^{opinion} ~~decision~~. In the case of *Key*, 1-
where this husband said they were not owners of
land but of the wife - the doctrine in *Baron*
and Anne case has been confirmed by *Key* as
was in *Trang*, and in *Lady Louisa* and
her affidavit was used to lay a foundation for
an information against her husband, for her
sexual violence by him to her.

Baron and Fane.

4th In Wheaton in the office of Executor 200. it is said that when the wife has debts due to her she cannot by making an Executor deprive her husband of the benefit that might accrue to him by being Administrator, but not his otherwise of goods which she holds as executrix, for no benefit could be conceded to him in that case, for they go to the next of kin of the wife's father; it seems to me that the soundness of this doctrine expressed in the first clause is very questionable, for the husband's right secured by Stat is no other than the right of a test residuary legatee after debts are paid, if there is no will it certainly is not a marital right at common law. —

Baron & Fane
35 pages
in the
manuscript
whether a marriage regularly solemnized which was obtained by duress of the force was void or not has been the subject of very discordant opinions. It is difficult to conceive why a contract confessed to be the most important that can be entered into should be

valid when obtained by duress, when all other contracts obtained by duress are void; The authorities also teach us that marriage by accident is valid, and again we want to know why it should be so that an idiot can consent to a marriage, If his consent to this contract binds him, why is he not bound by all other contracts to which he consents. If his understanding is such that he ought not to be bound by other contracts, neither ought he to be bound by his contract of marriage.

1st When alimony is given to a divorced wife it does not affect creditors, but the husband is personally liable.

2. When there is a divorce for the cause of adultery, it is only a divorce a mensa, at there are neither the rights of the husband or wife, as it respects property, except only such as is acquired by the personal services of the wife are affected by it, and the wife shall be

Baron and Henne

1. 24. 53.

entitled to her dower.

2^d In last case there is a circulo matrimonii now all the consequences of both divorces take place except the issue is not bastardized, and the wife being the innocent party is entitled to dower.

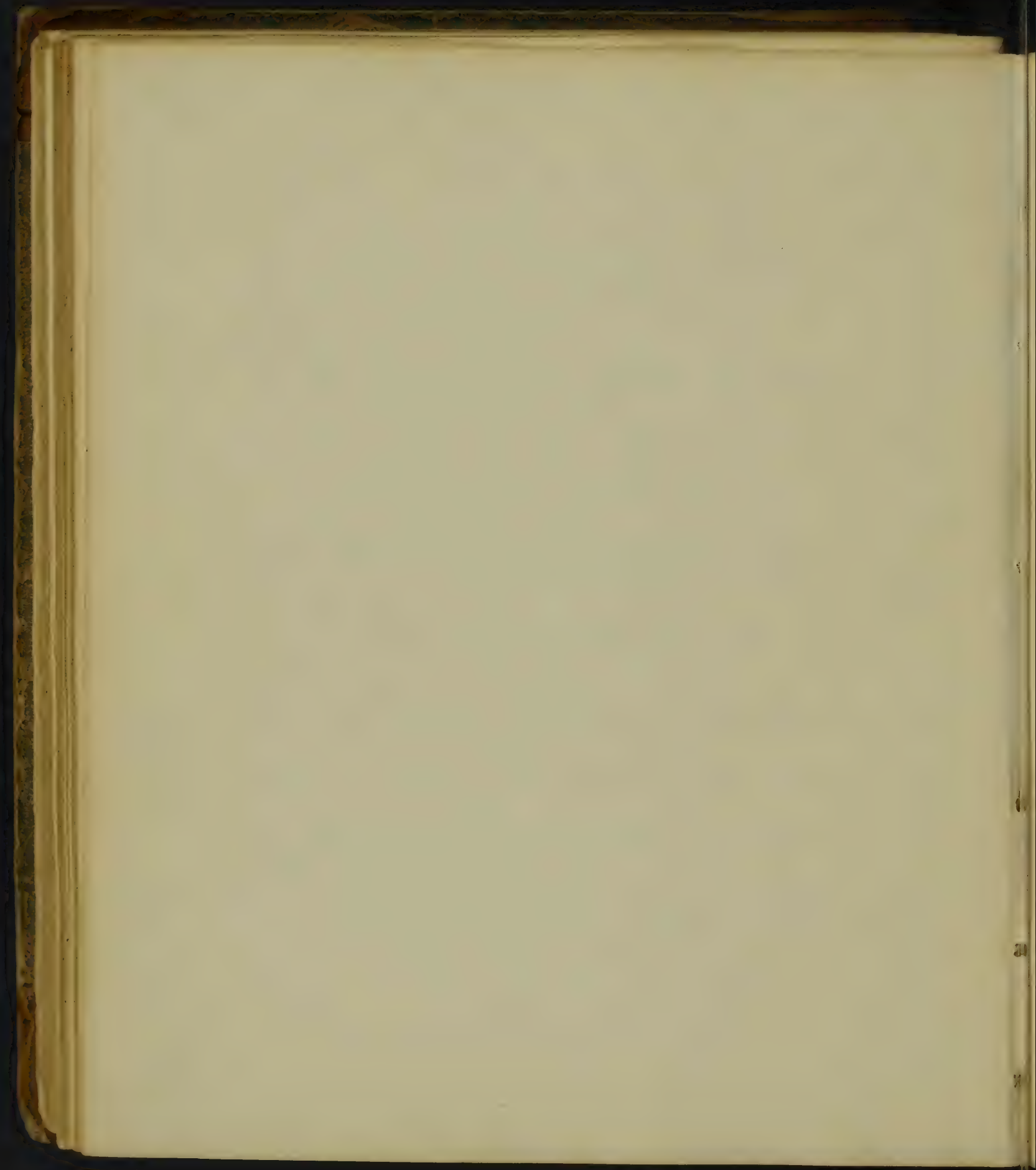
3^d In last it has been held that in case of divorce a circulo matrimonii which proceeds upon the ground that there never had been a lawful marriage, if the husband was indebted to the wife before marriage, after the divorce he is still a debtor, and all the property which he received with her belongs to the wife - yet if this property has been by the husband conveyed bona fide to others, the rights of such third persons are not affected.

2. 24. 54.
ent. 908.

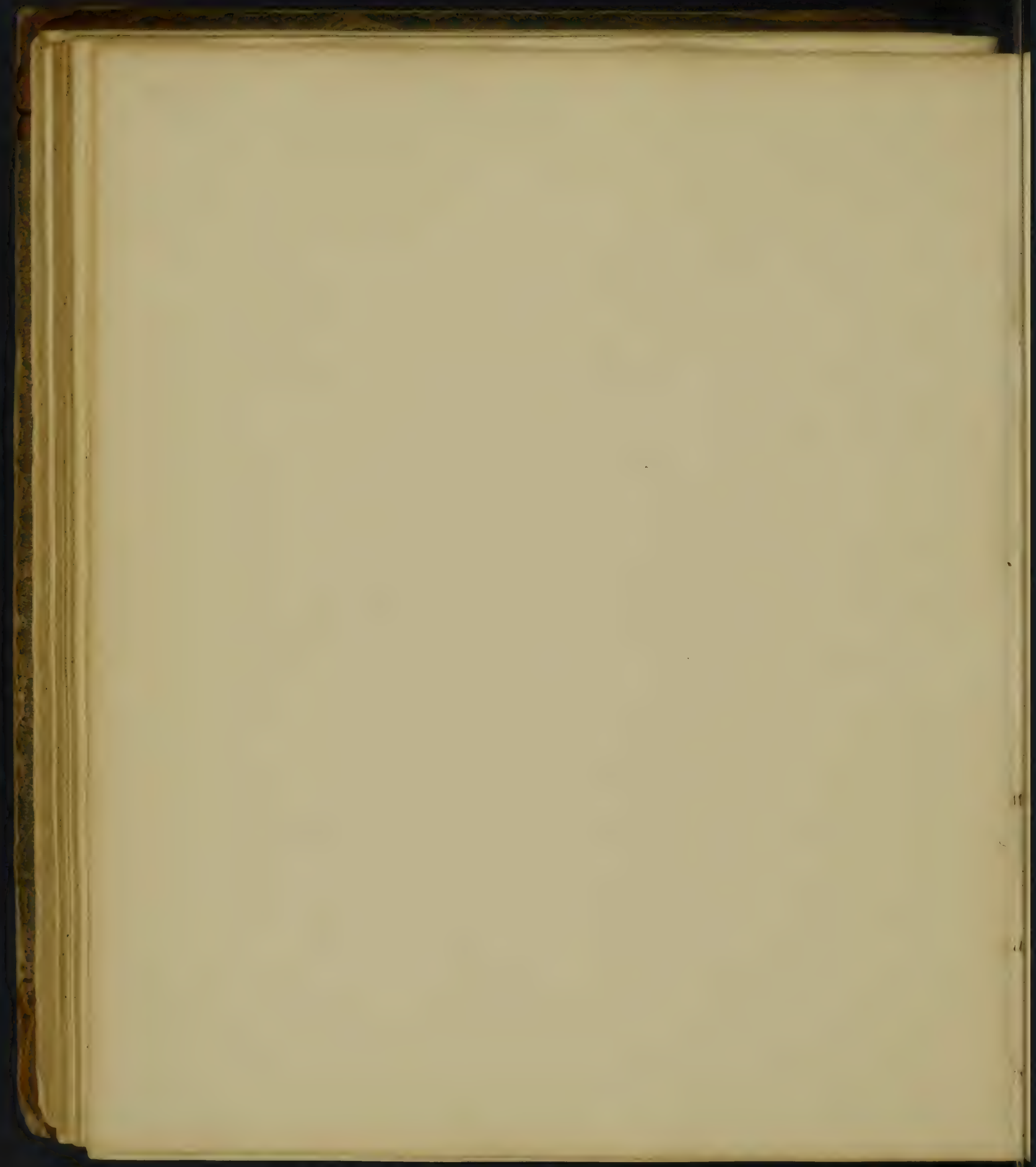
4th If wife divorced a mensa et thoro it is not entitled to a constitution of her husband's estate, nor a dower, nor a share thereof.

2. 24. 55.

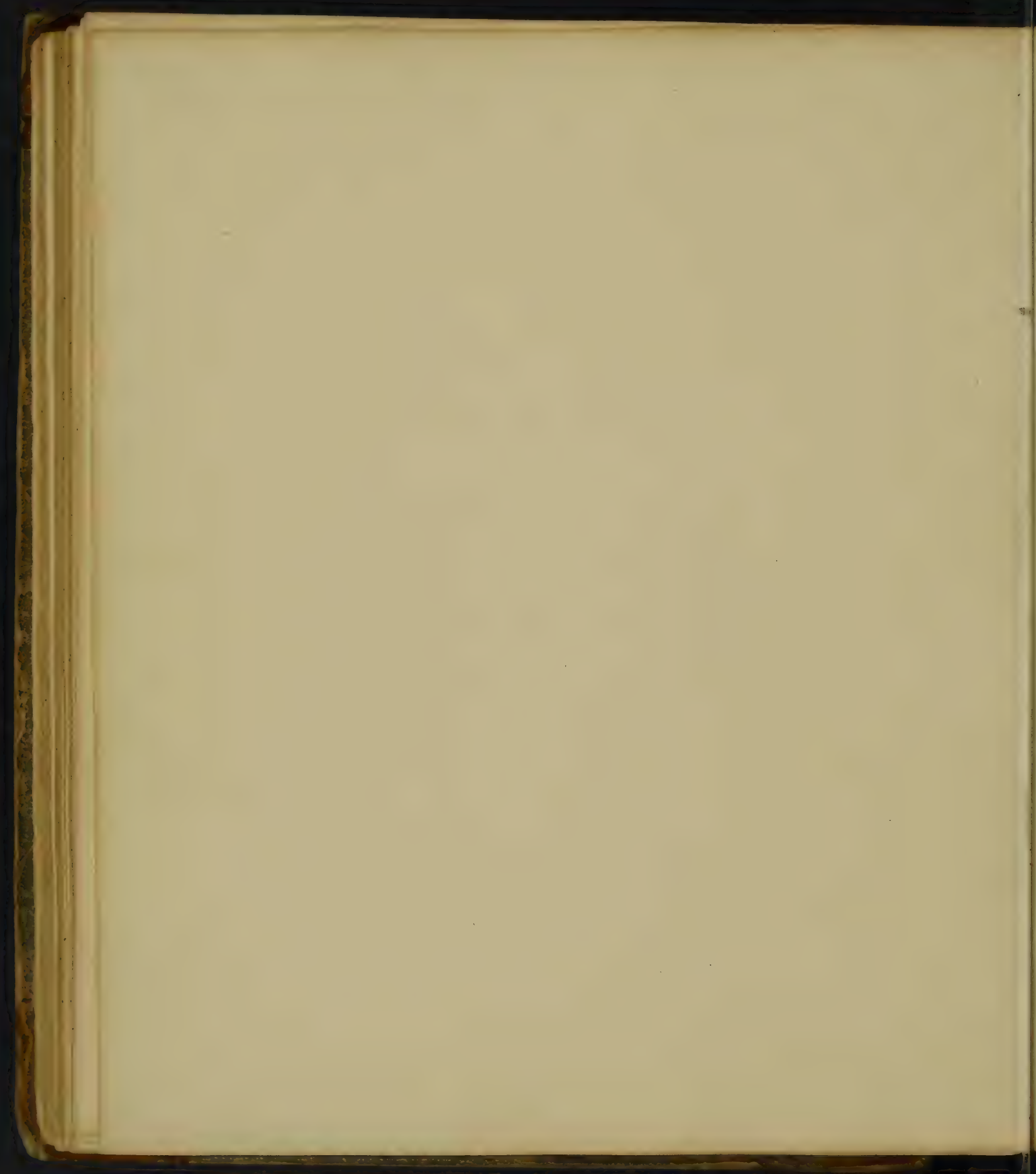
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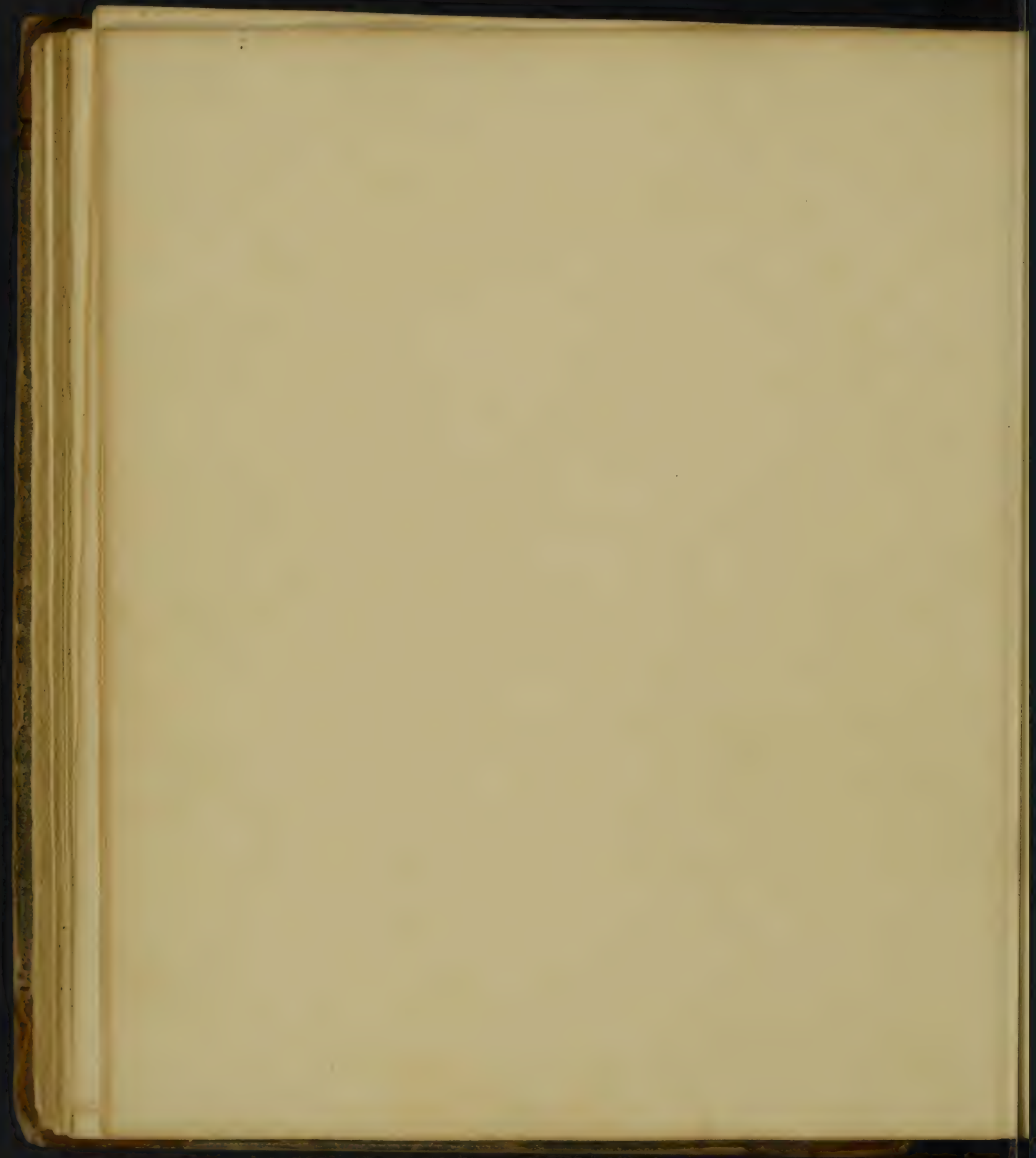


113





115



Parent and Child.

The title of Parent and child includes that of Guardian and ward.

A minor child or infant is one under the age of 21 years, male or female. The age which precedes this is the age of minority.

126.163
16th. sec.
10th. 189

The age of 21 is called full age. The person then becomes sui juris capable of acting for himself.

In treating this subject I shall first consider the privileges and disabilities of infants.

1st Privileges as to crimes or forbidden acts.

No person under 7 years of age can be punished for any crime, because cannot commit a crime, not having a will in legal presumption, and the maxim is that *non sit ens nisi mens sit ea*.

L. 31.20
17th. sec. 1
18th. sec. 1
19th. sec. 1

At the age of 7 a person is punishable for any offence, and in general he is liable for all offences that other persons are liable for after that age.

Parent and Child

In a full view of it.

Nov. 12, 1847

It was infant is privileged as to himself, he
is allowed into his practice at first, but an infant
ought not to be convicted on his confession without
great care and caution. Judges in these cases are said
to be his enemies. The judges even after conviction
he must have access to him of not guilty to be made
free. The trial is perfect. Judges will not permit any
parent to say any thing on his confession.

Vol. 186
Page 70

The presumption in favour of an infant under
7 years cannot be rebutted. It is a presumption, but
not a positive rule of law. It is the same in the
case.

But the presumption after 7 may be rebutted,
for this is a presumption de facto.

Nov. 19.
Vol. 337
Page 484
Page 20

Parent and Child. When inflicting punishment at his risk
parents sometimes extend to infants the law of murder,
which is not. The rule is if the parent acts by
law it is not a crime. If punished at law, the
infant is within it. The law cannot be
convicted upon it. If of law is containing his facts

Mount & Hotel

will not allow infants to be ousted of their ^{privileges} ~~privileges~~ by mere imputation. This is the true reason of the distinction. E.g. Stat. makes an act felony.

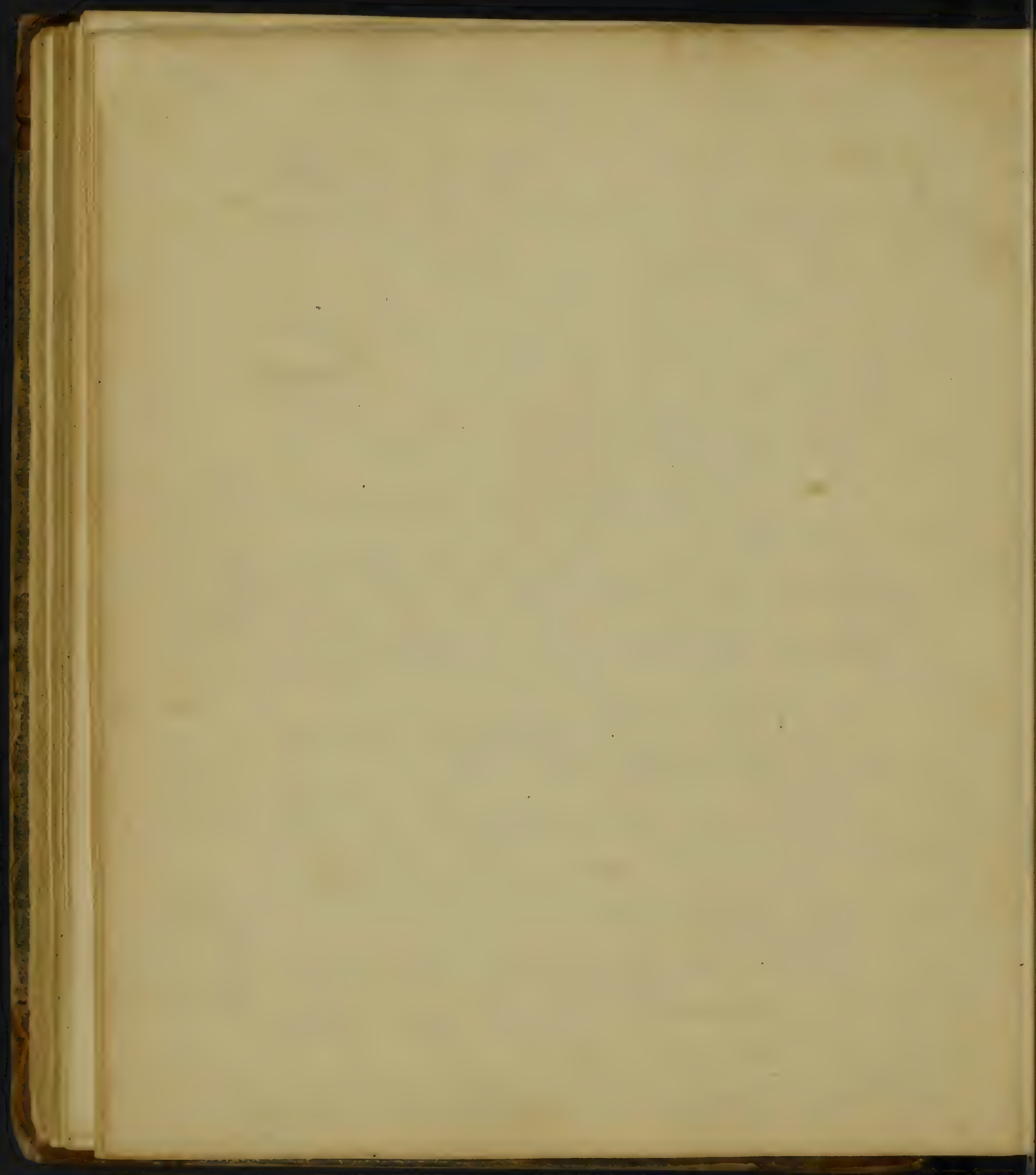
But if the Stat prohibits an act not corporally punished at common law, and the Stat does not expressly name infants they are not liable.

It is in the case of forcible entry and detainer. In these latter cases he said that the punishment is collateral to the offence i.e. I suppose that corporal punishment is not incident to the act at com. law. 1. Hole 21.2
1. B. 247
357
1. B. 644
1. B. 274
1. Hawk. 1.

2ndly Consider their privileges as to torts or civil injuries.

For torts committed with force an infant of any age is liable civiliter. Upon the question of guilt or innocence, the age is wholly immaterial. In trespass the intention is not regarded. A malicious intent may aggravate the damages, but does not affect the issue. On this principle it is that Idiots, lunatics, madmen &c are liable civiliter for torts but not criminaliter. 1. Hawk. 81
9. Vin. 345
1. Hawk. 3
2. B. 47

But this general rule does not hold as to civil wrongs



with ^{out} force - as fraud - but in order to subject to
this action, the words must be actionable per se, &
also must be malicious. It has been decided that an
infant of 17 is liable to an action of fraud. But he
is liable under that age if he is deli capax, and
this must be proved - this is of the gist of the action.

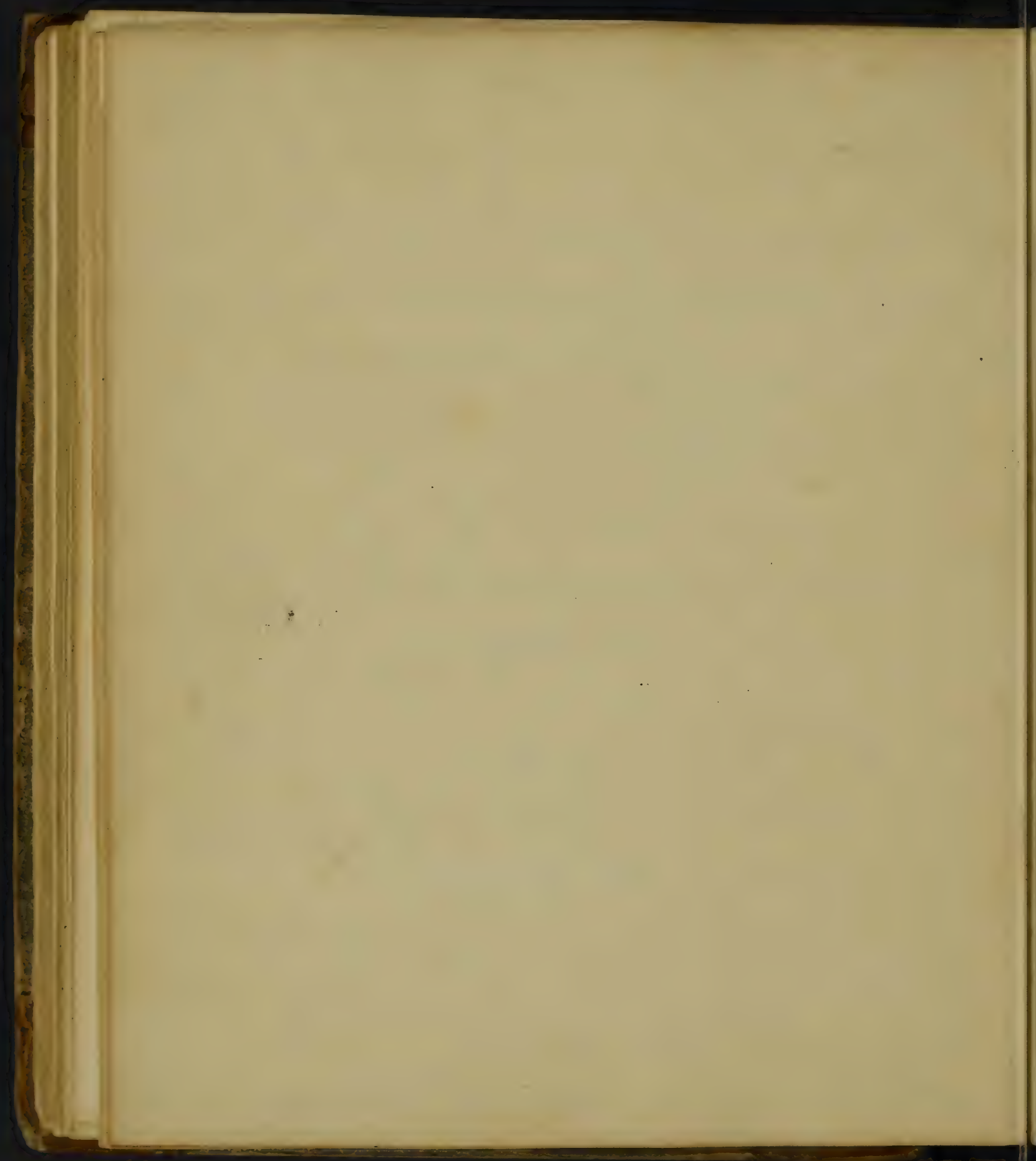
Is he not liable at 14 and as the case may be
applied according to the rules as to crimes?

The an infant is liable to be punished as a
common cheat, yet it is said he is not liable in a
civil action for fraud and deceit. 3 Bac. 132
1 Root 179
- 272

He must be deli capax, in order to be punished
as a common cheat. 1 Sid 129
... 258
1 Geo 169
1 Keb. 778

Indeed it has been held that he is liable civil - - 905
dec for such torts only, as suppose a kind of violence
or force. as Trespass house &c. 1 Keb. 941

This is not law because he is liable to an action
of fraud and here is no violence. This doctrine is
disapproved by Lord Mansfield (3 Ann 1802) and by
Lord Kenyon (1 East 223). And Lord Kenyon held
obiter that he would be liable even in indebitatus



a promise arising ex delicto, as for embarking off money.

An action sounding in tort merely cannot be sustained ag an infant, when the liability is the cause of action in fact arises if at all ex contractu. E.g. A horse is bailed to an infant who abuses him. Here the ground of action is contract.

Chief Justice held by Parker and Stowell that if an infant takes upon himself to trade and act as of age, no evidence of infancy can be admitted. Reason given is that if this evidence is admitted, they would take advantage of their own fraud. Not less it seems. If it were his contract would bind him in such cases, and so destroy his privilege. In some cases however Chancery will decree a contract to be good ag an infant on the ground of fraud, to prevent the effect of his fraud. The precise rule laid down as to particular class of cases in which Chancery will thus interfere. But this cannot be done when the contract is absolutely void - this would be to make a contract for him.

2 Eq. cas. 26-

489
Stimms 36

17 Mart 70.1

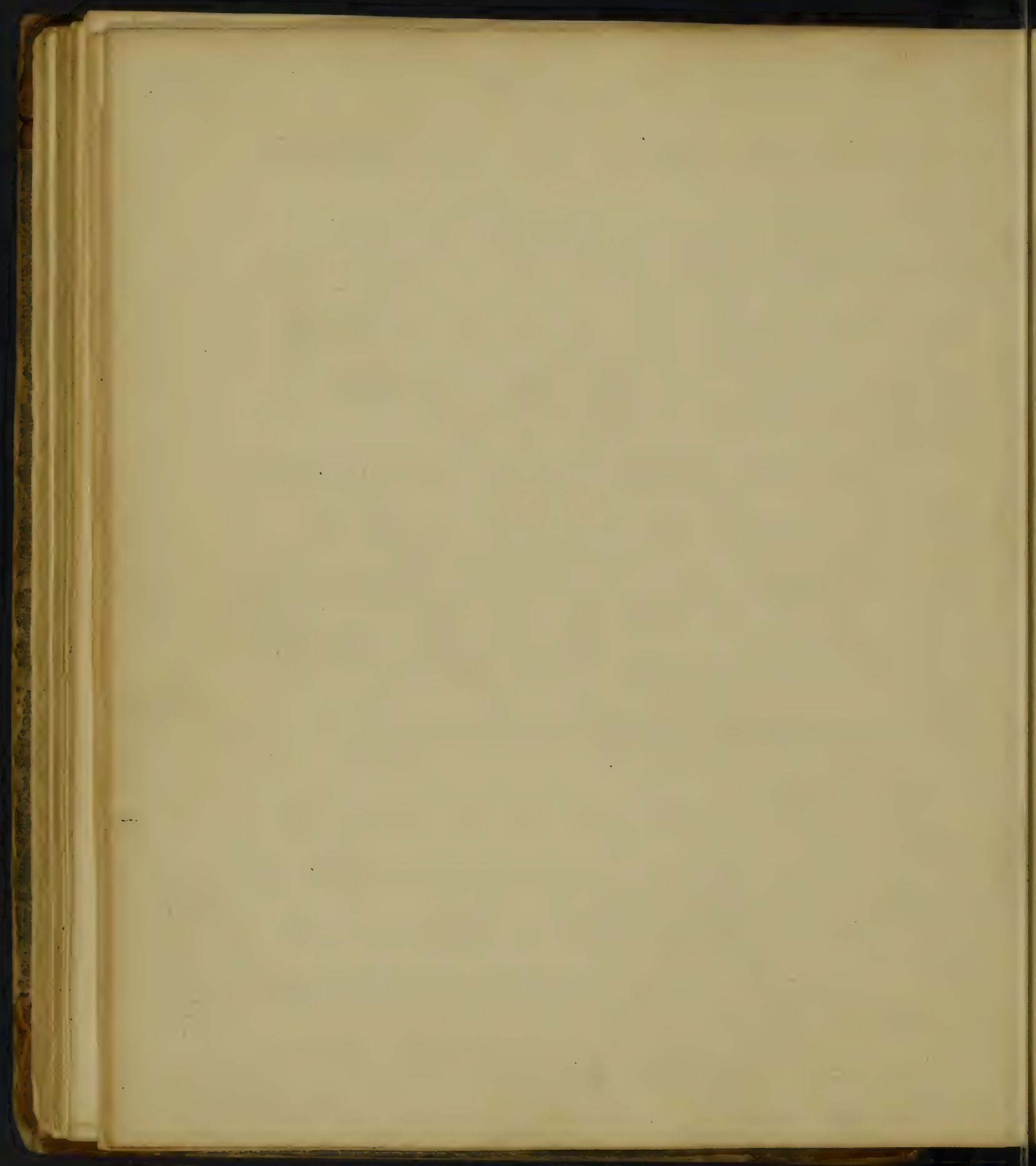
9 Mart 38

41 Mart 353

12 Mart 179

1 Mart 71

17 Mart 75



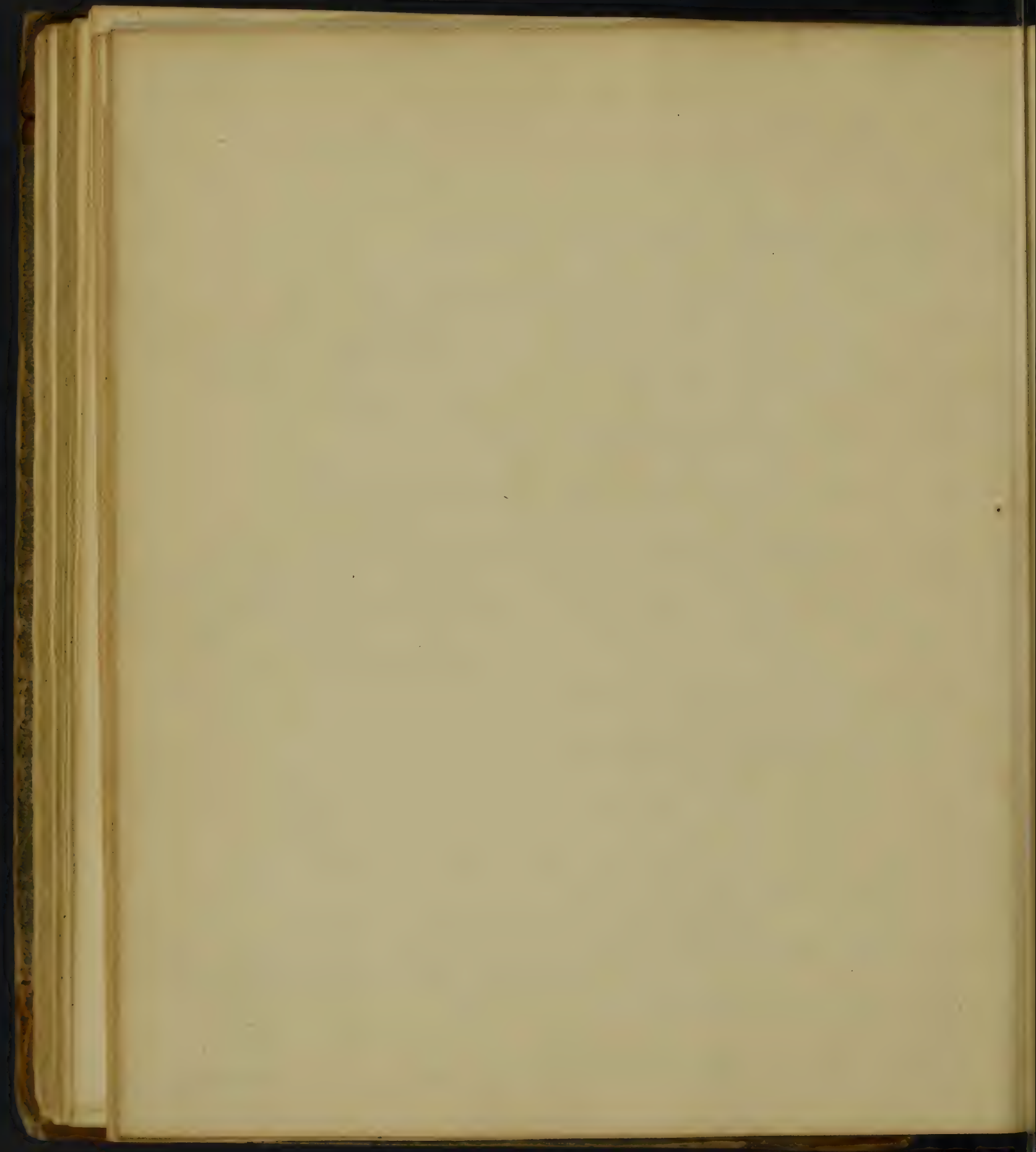
Of children's privileges &c in relation to contracts &
Other particulars of a miscellaneous nature.

1. Of Particulars of a miscellaneous nature.

According to the law of Eng^d the age of discretion
to choose a guardian is 14 in both males and females. 121 463
In law it is that the age is 14 in males, and 12 in 121 24
females. An infant of any age may be an Executor,
even a verbal or more, but this means no more than
that, he may have all the rights of an Executor in
point of interest, but cannot act as Executor till 21. >
in the mean time an Administrator must be appointed
over his estate to manage, and to be appointed. 56.29
tomb after: 214
First 250
last 466
467
Sabb 34
20 Aug 185

But an infant cannot be Administrator till 21. Reason is,
no one can be Administrator without bond given for faithful
discharge of his trust. In Eng^d an Ex^r need not.

But in Law it is that Ex^r; as well as Administrator
must give bond for faithful discharge of his trust. - 160
It seems therefore that no one can be Ex^r in Law 1
under 21, for an infant cannot give bond. 56.29
5 mid 295
Lomb 475
Sabb 446.7



The age of consent to marriage is 14 in males and 12 in females, but if one of the parties is under age, and the other not, either may dissent, for no legal obligation - to not material, both must be founded on either. 1 Bl 469 - 436 - 934 - 12079

But a female to said may be betrothed at 7 and if above nine according to some if nine at his death he is entitled to dower. 12079

Doubtful at what age an infant may dispose of personal property by will. The better opinion seems to be that the age is 12 in females and 14 in males, provided the party is proved to be of sufficient discretion. 12089 - 12094 - 409

This agrees with the rule in the Ecclesiastical courts, which in Eng^d govern in such cases. 2 Wils 313 - 131463 - 200497

Under our Stat law, the age of 17 is the age for disposing of personal prop^y by will. 12094

Age, ability &c. Full age is completed on the day preceding the 21st anniversary of ones birth. The day on which one is born is ^{the first} day. Suppose a person born on the first of Jan^r, he will be of full age on the last day of Dec^r on the 21st anniversary, after, and 12094 - 12095 - 12096

* Suppose person born 29th Dec^r in leap year when will he be of age? In Eng.
Stat. of Hen⁴ says the 28th shall be accounted one day in law. -

Infant and Child

x on the first moment of that day. so in judgment of law, ^{Rest. 1141}
 he may be 45 hours older than he really is. ⁶⁸⁶
^{Eng 317}

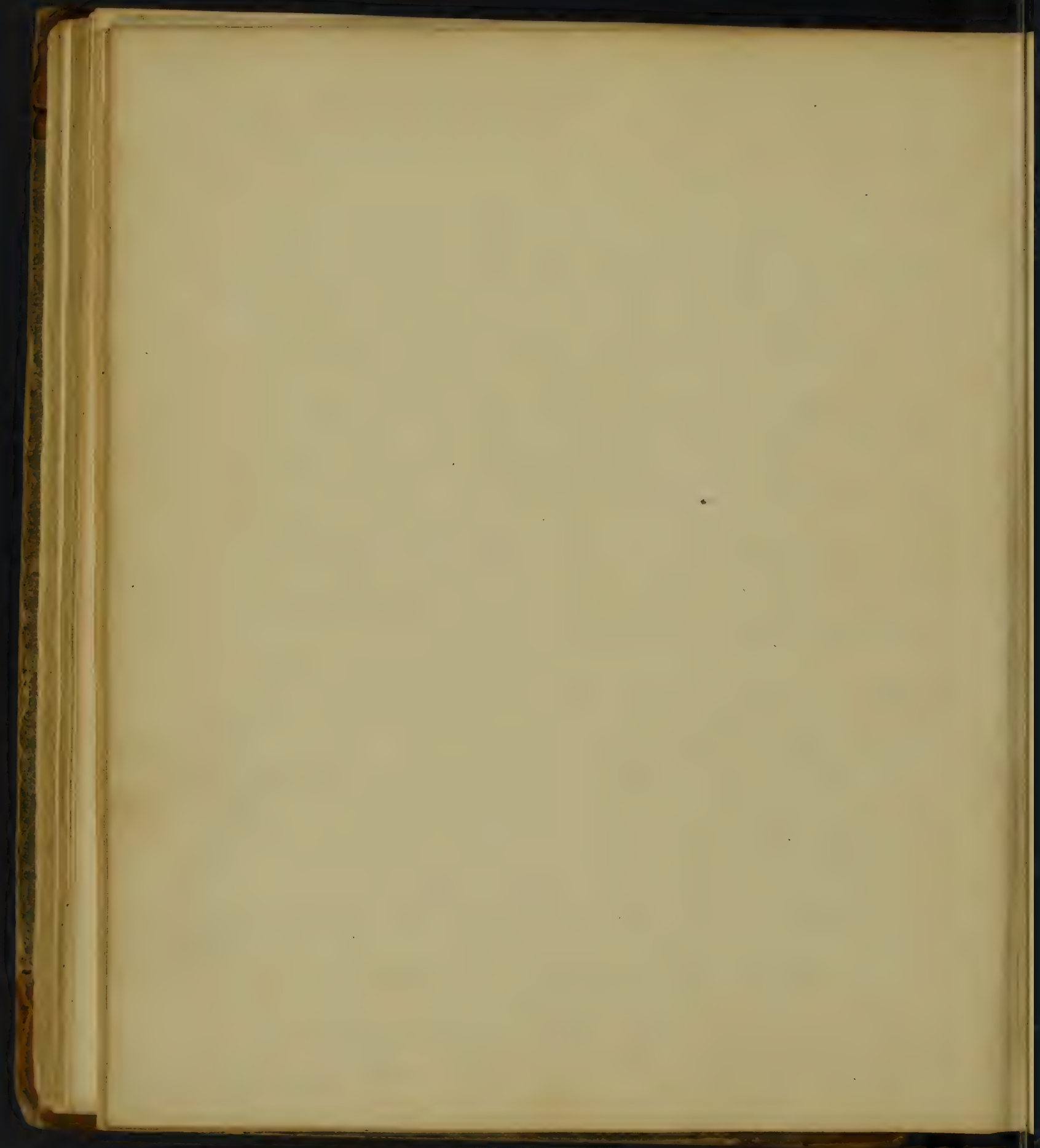
now as to contracts. It is a general rule that no person under
 the age of 21 years can bind himself by contract. Reason
 is the law presumes not discretion sufficient. By the Roman
 law the age of was 25 this time in most of Europe.

Regularly then the contracts of infants are either
 void, or voidable. But the an infant cannot bind him-
 self in a contract, this privilege is for his benefit, &
 hence if an infant, and an adult join or one side in a
 contract, the adult is bound, the the infant is not. The
 privilege is the infant's and does not extend to the adult,
 he has nothing of which to complain. ^{1 Rest. 38}

If an adult contracts with an infant, the former is bound, ^{1 Poul. 38}
 not the latter, for the same reason supra. ^{1 Inst. 25}
^{1 Vent 57}
^{Co. L. 3 82}

And the same rule obtains in Equity as in law, ^{3 Atk 937}
 and Chancery will decree a specific performance ag. the ^{1 Ed. 441}
 adult. ^{444b.}
^{1 Poul. 44, 46}
^{4 Inst. 398}

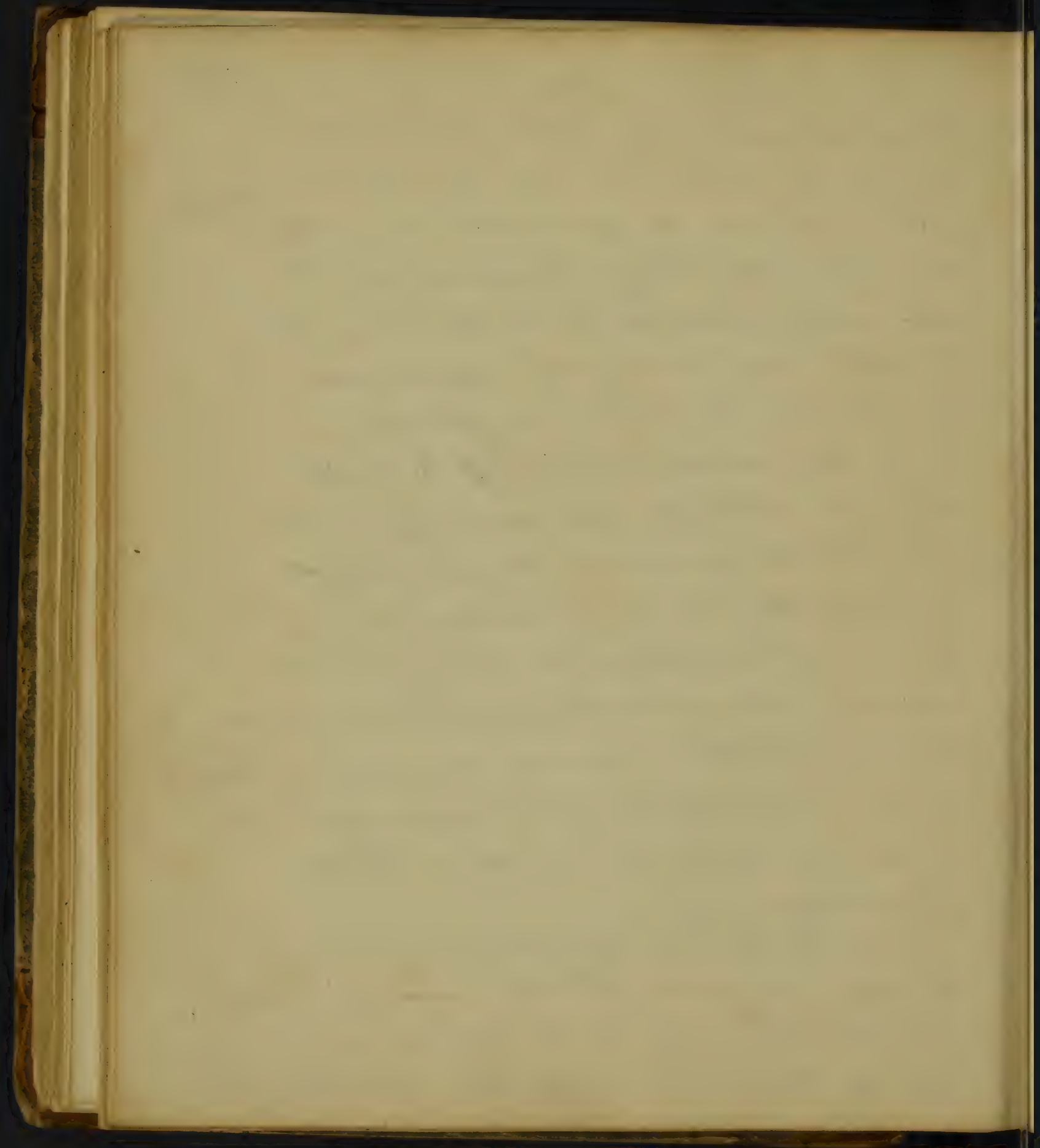
But the rule does not hold as to the adult when the
 contract on the part of the infant is absolutely void.
 for no consideration. But not so as to a voidable contract,



for here is a chance of specific performance, and this chance is a consideration. But when the contract is general the infant void his agreement is a mere nullity. ^{12 Wall. 311}
 And it seems that if the infant has received the consideration moving towards himself and then has decided to contract, he cannot be compelled to refund or restore the consideration. He is considered as a gift to him. ^{Ma. 9. 35}

The adult contract, at his peril, for the doubtful nature of an infant should put him on ^{his} guard, and he is bound to know, and where there is no fraud, the rule is undoubtedly correct. I think the objections to the rule are not well founded. The action ought not to be allowed to recover the consideration, for the infant may have spent the money, and if recovered must come out of his property, and in that way he might dispose of all his property. This would be a violation of his privilege. ^{15 id. 129}
^{1 dec. 169}
^{1 Met. 605}
^{9 13}
^{3 Bac 146}

But the rule that an infant may not bind himself by contract is only general and not universal, for it is well settled that he may bind himself by contract for necessaries, then are food, apparel, lodging, instruction, ^{12 Met. 345}
^{1 Bl. 466}
^{Crop. 149}
^{8 Met. 578}



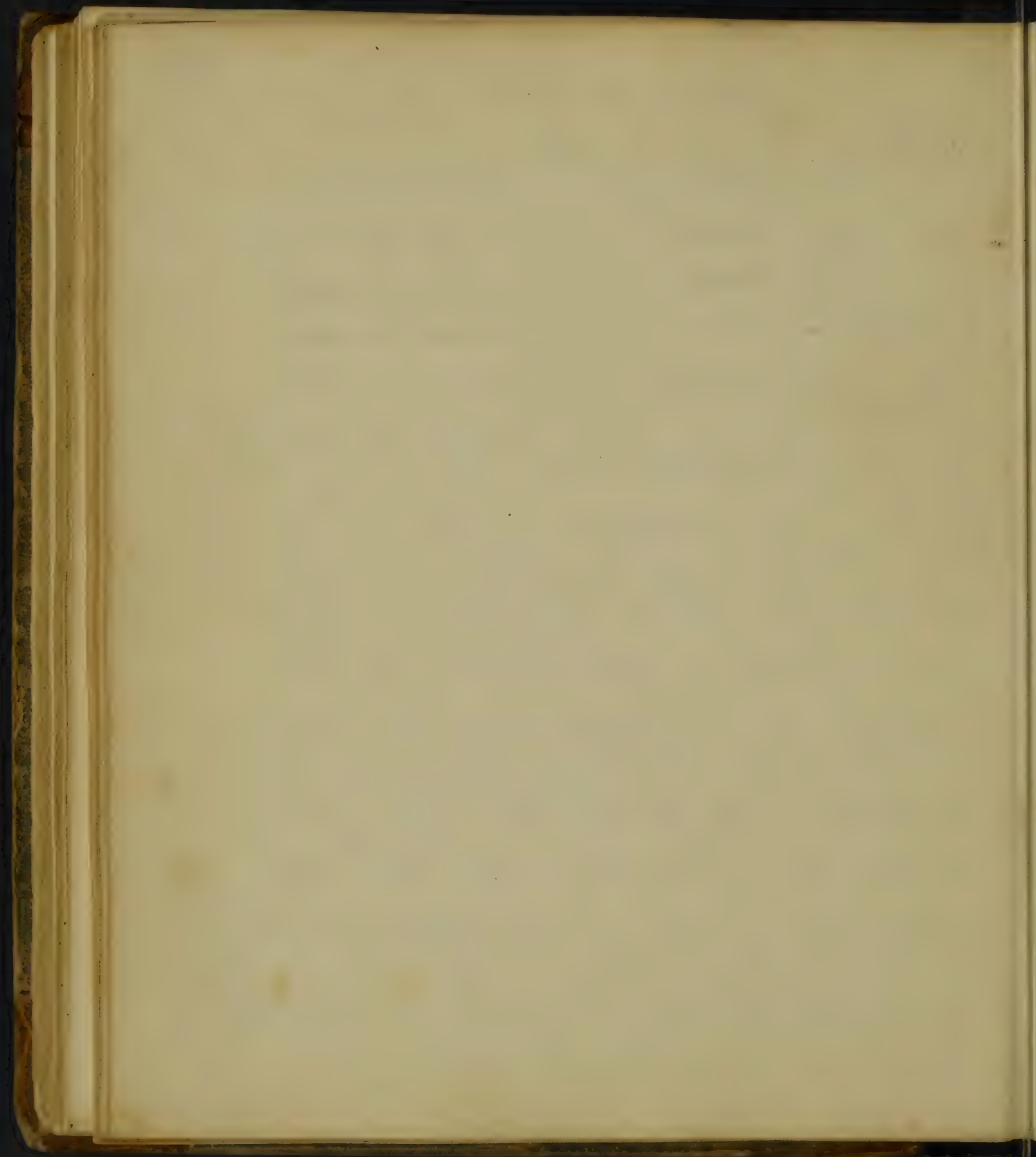
and medicine. &c. &c. A valuable trade.

This exception is founded on a supposed necessity, and is intended to enable an infant to contract so as to prevent him from suffering. If he were not thus permitted to contract, he would be in a worse situation than other persons. But the privilege was granted for his benefit.

But these necessities must be necessary for the infant at the time of contracting. What is necessary for one infant may not be necessary for another. Case 560
Sept. 15/1
Salm. 161

It is the province of the jury to determine whether the articles were necessities. The question what sort of things are necessities, is a question of law. That ^{which} is necessary in legal contemplation for one infant, may not be for another. This depends much on his condition and situation in life. Some instruction is necessary for all infants, but all instruction is not considered as necessary, as an education in the University of Cambridge. The 1161
93. R 578

The education must be suitable to his standing in life, and then the Father is bound. It decided in Cro. E. 533
Cro. 560
Cant. 116.
12mt. 68. Connecticut in case of *Howerton vs Wilson &c.*



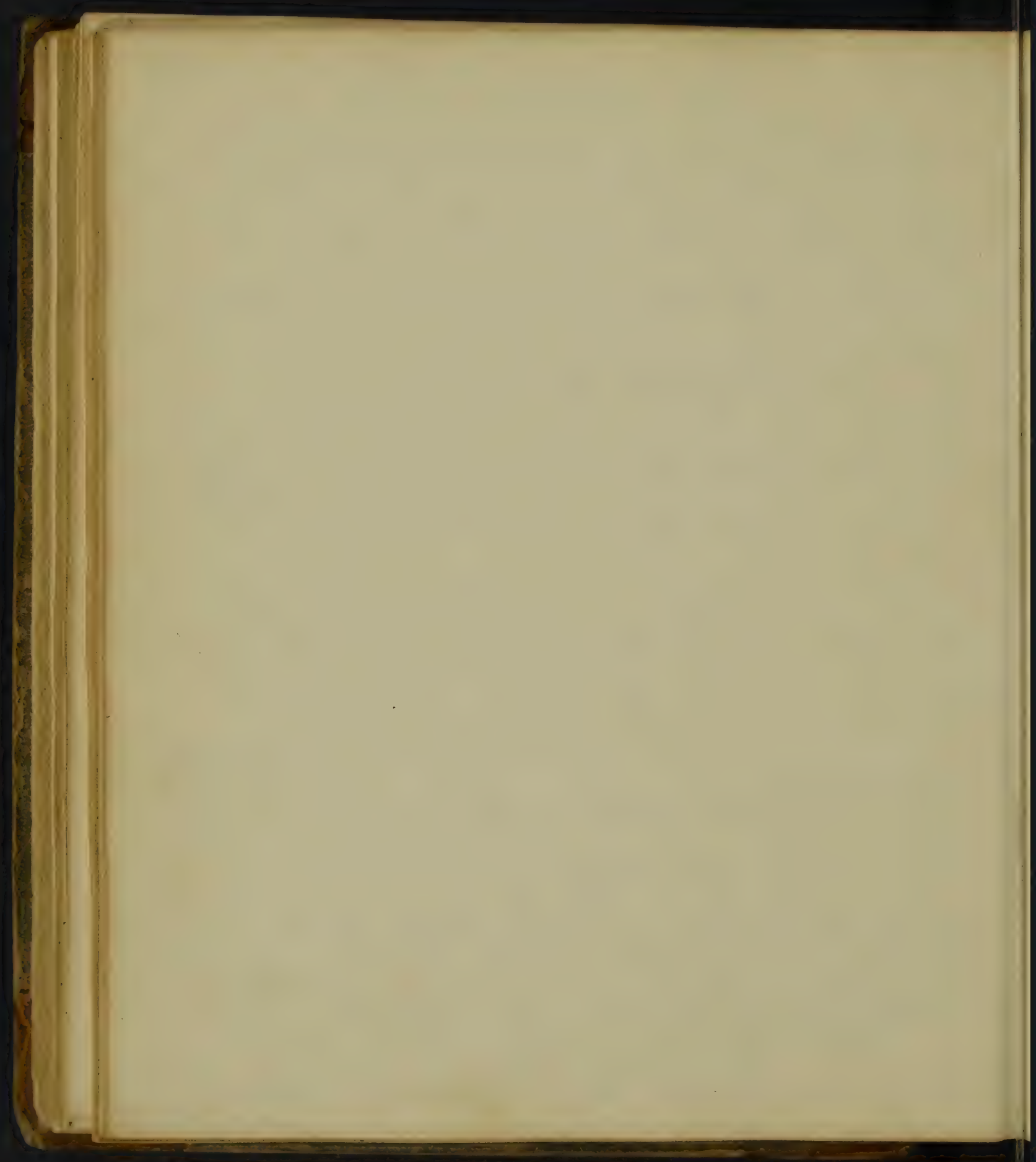
As the jury are to decide upon the utility of the sale
and receipts, it follows that to a plea of infancy, the
Jury may reply generally that the contract was made for
necessaries, and the nature of the articles consistent in great
evidence.

An infant is bound by contract for his own
necessaries, & he is bound for those of his wife and children;
as the law herewith binds him to make the principal con- Stat. 114
tract his marriage, it binds him to make those Stat. 103
necessaries consistent.

And an infant who is married is bound during
the coverture to pay the debts of his wife contracted before
marriage. For he takes her own estate in, with all her
circumstances. He is not in a capacity to pay the debts
therefore he must. annotato 95

But there is a general rule that an infant can
bind himself for necessaries, yet he cannot bind him-
self even for them, if he is under the care of a parent,
guardian or master, & is well provided for. It must be clear
also that he is not ^{only} provided for & he is not bound.

And now this latter rule it follows that an infant
can bind himself by contracts even for necessaries only in three

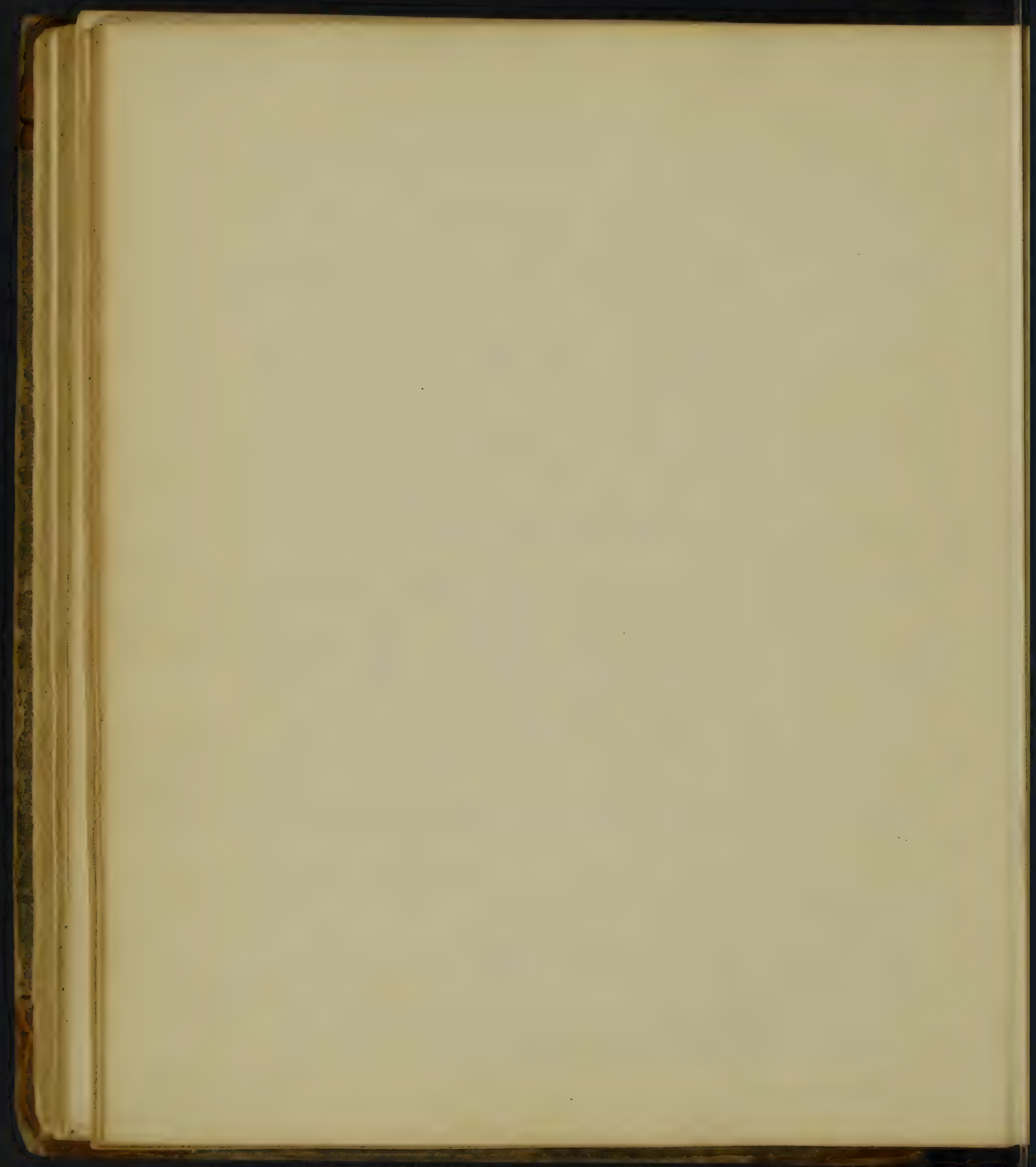


cases - 1.st When the infant has no parent, guardian, or master, he may contract.

2.nd What tho he has a parent, guardian or master, he has no one in the country, as one in England, or one in this country.

3.rd Where he is under the care of parent, guardian, or master, and is not duly provided for.

But as there are but two cases the infant, first if he has one in the country it seems - for parents are bound to maintain their children, and the infant, however contracting, in these cases is intended not to discharge the parent, but to relieve himself. In Count. Stat. enacts that an infant under the government of parent, guardian or master shall make any contract which shall be void in law, unless the parent &c consent. This rule I think is not meant to include the infant foreigner, as it is not duly provided for and he must be allowed to contract, as the infant must become a pauper in the town, for the time being and be put into a poor house. To withhold a privilege ought not to be taken away by implication. I think the infant has the same right now as at common law.



As to the liability to pay for benefit given in case the
 that the instrument is a rule in that of the benefit &
 there is no contract for time the benefit is bound.

The rule is that the intent is bound by his contract.
 he is not bound by it. But it would even be
 necessary to his contract contract. he is liable on the
 ground of an implied contract on a general contract
 is a rule. He is not liable to the extent of his agreement
 but only to the amount of the true value of the benefit
 given. But an action would be bound by his agreement.
 if they were not worth half the benefit given. It seems
 then that the intent is bound on a implied contract.

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 Feb. 99
 Feb. 100

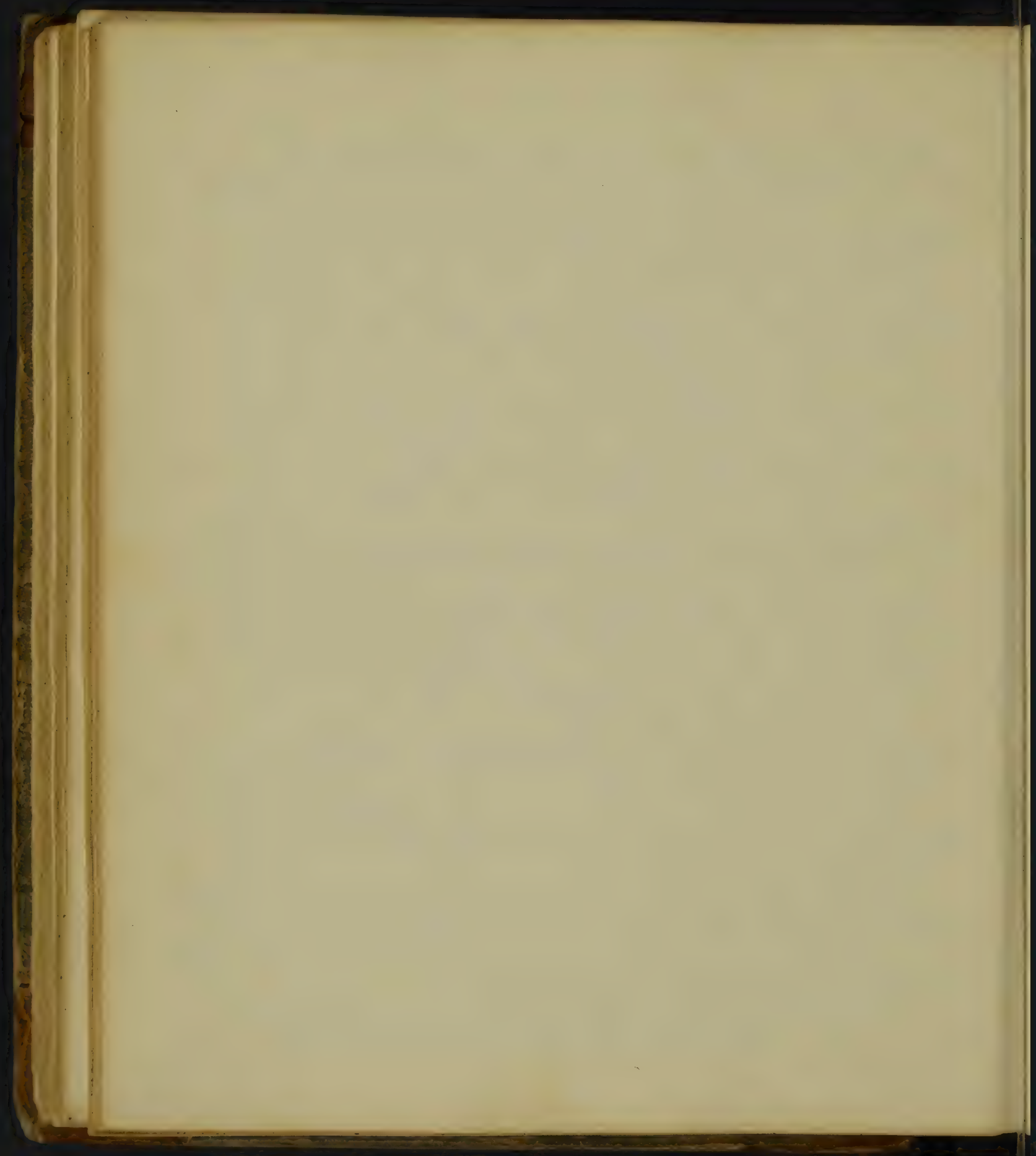
Now consider in what way a man can bind himself
 himself even for a benefit. The distinction in his obligation
 1st he is agreed that an intent contract himself by
 benefit bond in any way, however a contract the intention.

2nd But by a single bill he may bind himself in an
 instrument under hand and seal, but without a specialty,
 given for the precise liquidated sum due.

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 Feb. 100

3rd By a negotiable bill actually negotiated, if put
 is not bound.

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 Feb. 100



4^{thly} By a note not negotiable, or a note negotiable, & 1st 1803
not actually negotiated he is bound. *Par. 6. 345*

5^{thly} By a bill of exchange not negotiated, he is bound; *Par. 4. 160*
but when actually negotiated he is not bound. *Ch. 1. 160*

6^{thly} By an account stated or an account signified &
signed by the party, he cannot bind himself, & accoun-
ties of course he is not liable on an insinuated compul-
sion. *Par. 16. 73*

An account stated is an adjustment and a balance
struck between the parties. *120. 40*
Lat. 119
3. 300. 14
100. 87

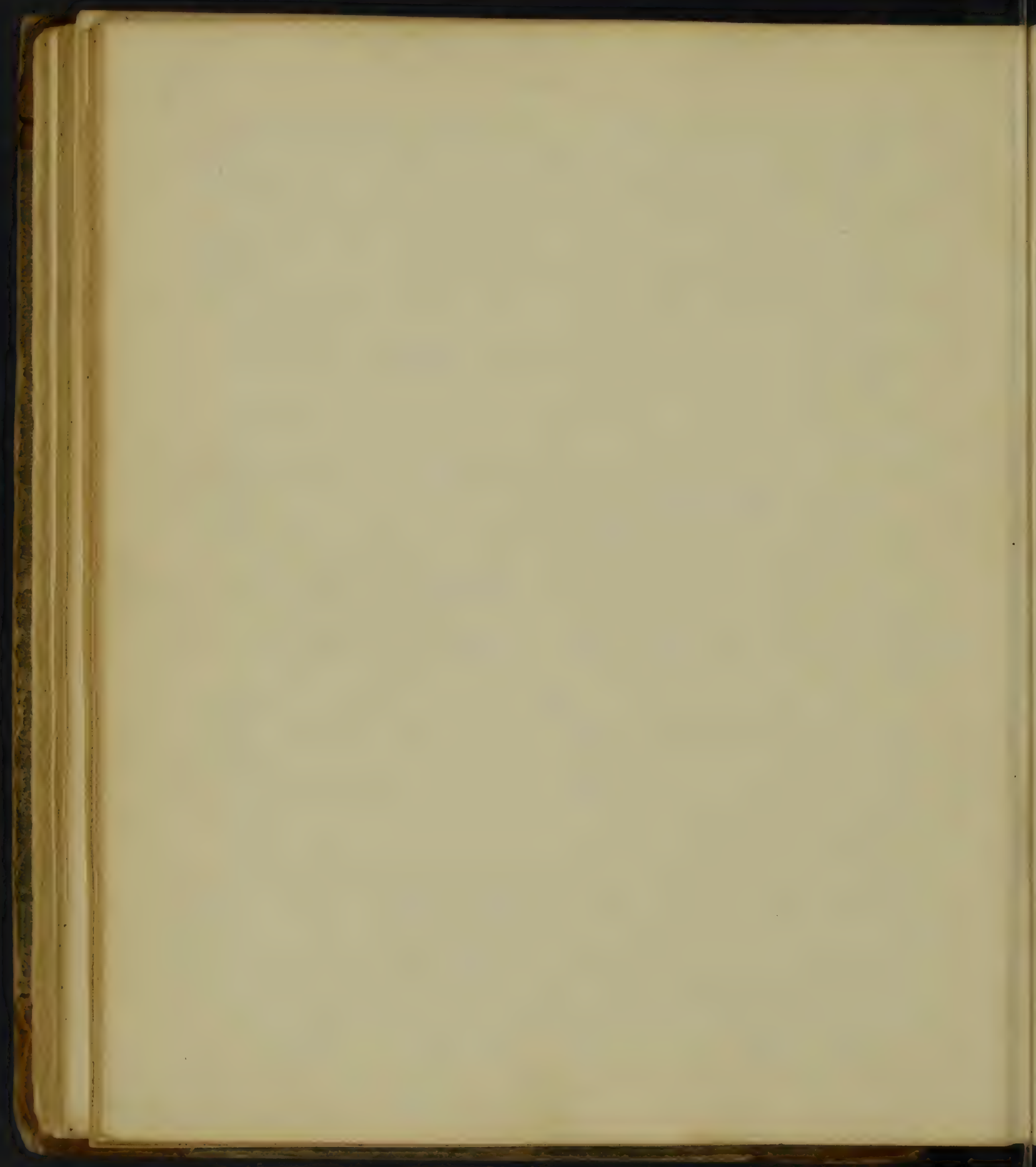
The reasons for these distinctions will now follow.

1st Not bound by a penal bond. Reason said to be, that the whole
penalty may be forfeited and so work to his disadvantage.
But this is not satisfactory, for relief may be had against
the forfeiture. But the true reason is, it is a penal bond
the consideration is unknown and cannot be examined,
except to show illegality. *Par. 6. 100*
Ch. 1. 100
100. 100

If therefore he was bound by a penal bond, the infant
would be obliged in case of forfeiture to pay the penalty. *Par. 1. 100*
Ch. 1. 100

Hence this we derive the conclusion generally that where the
consideration is such as is examinable, he is regularly
bound. Thus, not:

2^{ndly} He may bind himself by a single bill for



Dec. 185

1866. 394

418, 423

1841

172

King, 1810

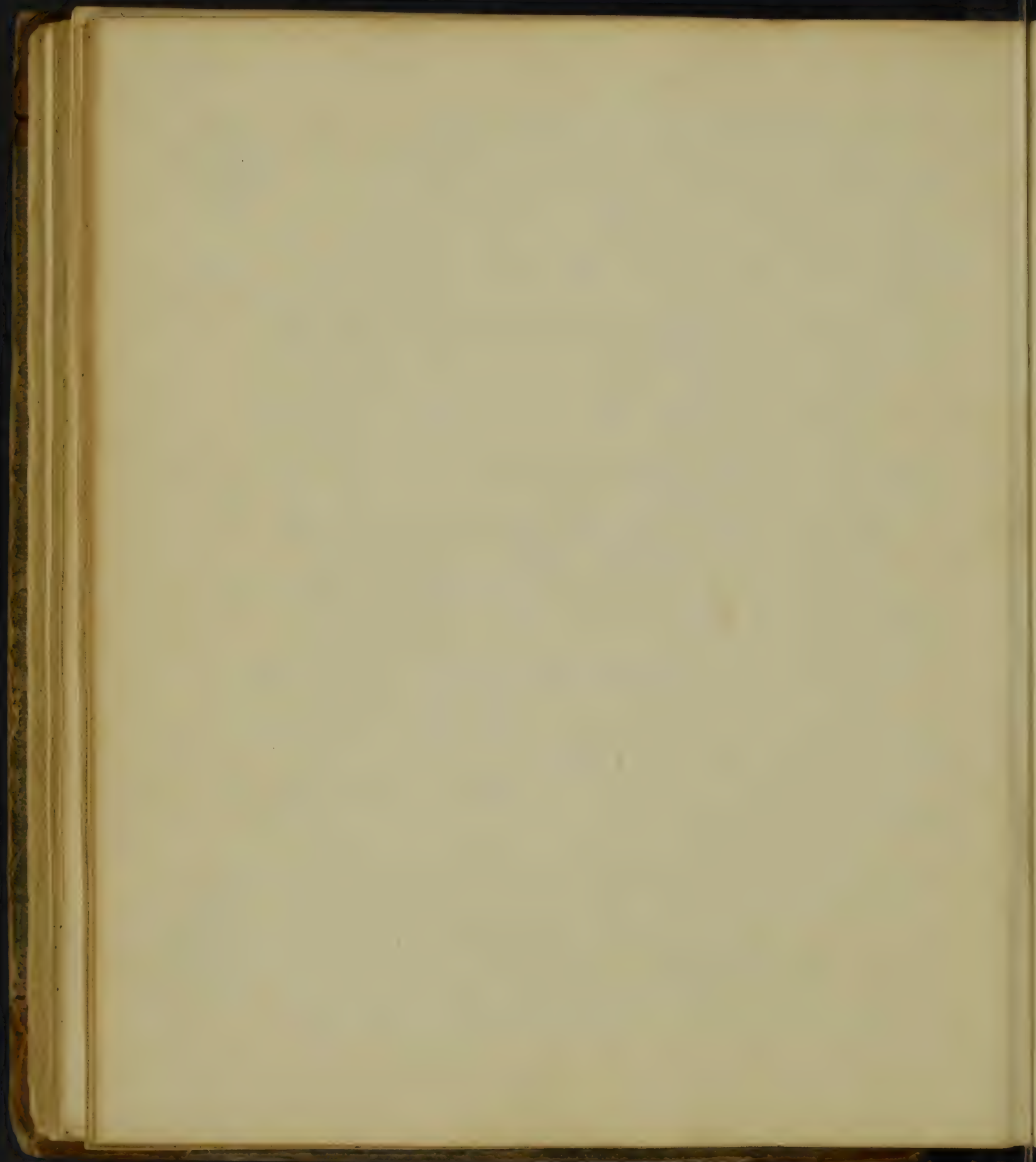
Ann. 70

1897-7

July 9.

1787

12/1/11



associated no inquiry can be made into the consideration.

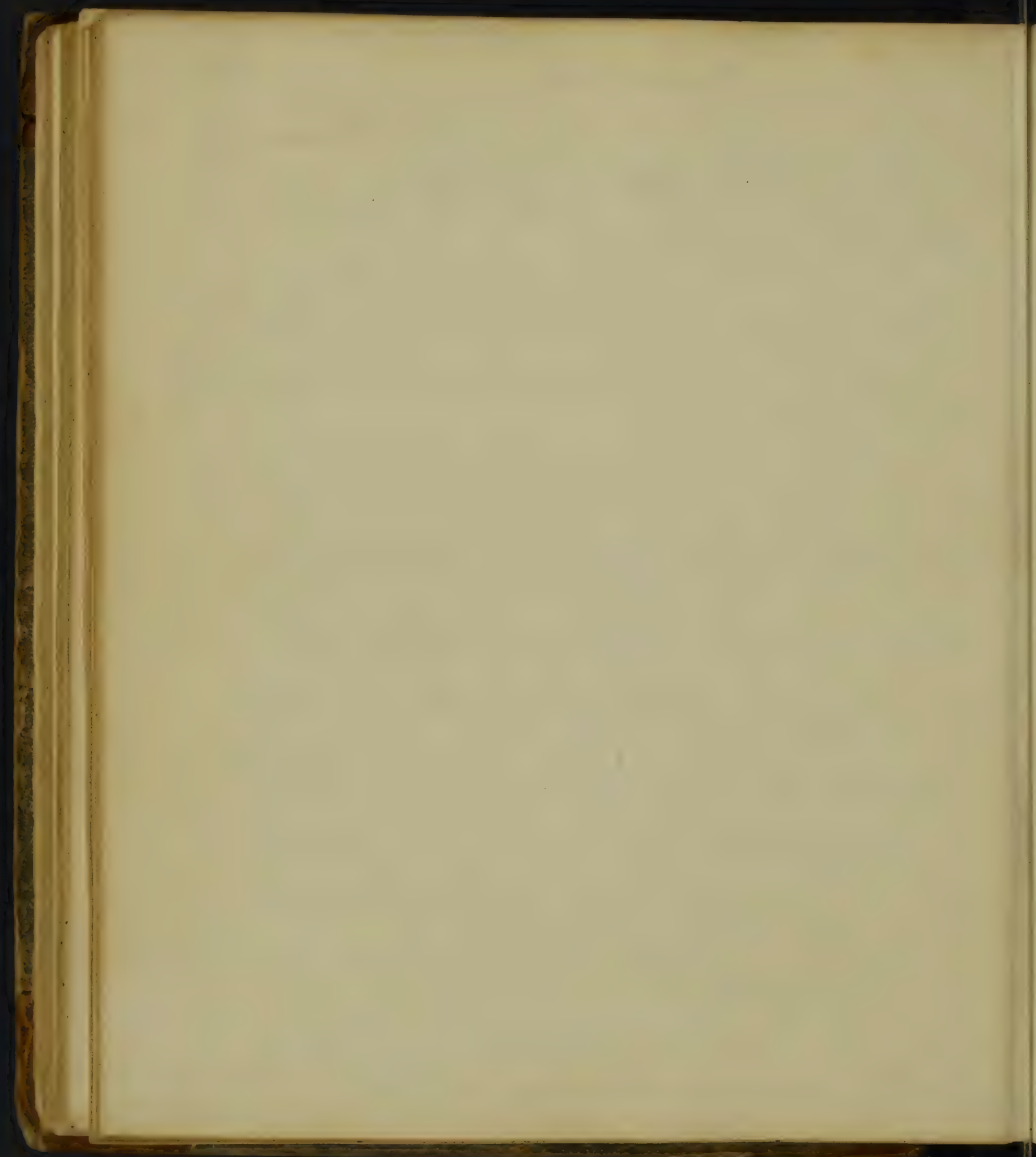
By an account stated is liquidated and signed by the parties - he is not bound.

Formerly the items of an account stated were not examinable to see if the note continues, for the reason has ceased. Now it is that the items of an account are in most cases examinable.

1842. 169
1843. 57
1844. 612
1845. 56
1846. 18
1847. 462

Of the cases in the margin support the principle that an infant is bound for necessaries. But in the case of a bond sold, is he bound by an action of indebitatus assumpsit to recover the amount of the necessaries? is he liable on the original implied contract? This depends upon the question whether or not the bond at law merges the simple contract? This is however another question whether the bond is strictly said to be a discharge. If it is void, it cannot merge the simple contract and so have no effect. If it is voidable only, it merges the simple contract. So this decides the question. Current of authorities say it is void, on principle it is voidable.

The question whether an infant may subject himself to an implied contract, depends on the same question.



Parent and child.

1. 11. 179
185
2. 11. 185
1. 11. 185
1. 11. 185

reparies. The contract is good or not, at the time of the making.

The difference between money lent to purchase necessaries and money expended for infant in necessaries is different. Money lent is a real demand necessaries, but money actually expended for necessaries is considered as necessaries.

If equity, money lent and expended for necessaries by an infant, the lender may recover the value of the goods bought, as being on the place of the Vendor, he does not of course recover the amount of the money advanced and so if Vendor himself, he only recovers the amount of the value of the necessaries.

1. 11. 185
1. 11. 185
2. 11. 185

but an infant is not bound for articles to maintain in trade. This must be done by his Guardian. There are not necessaries. Even if he might make these contracts, he might make almost any contract.

1. 11. 185
1. 11. 185
2. 11. 185

If an infant is the owner of buildings, he is not bound by contracts for their repairs not necessaries. But in one case an infant is liable to which I cannot distinguish from this viz. if an infant takes a

1. 11. 185
1. 11. 185

Case of a house, a loan, an assignment, or a lease - in
 favour the bond title rent day, or action of debt for
 rent will lie against him, if the annual rent does not ex- 11, 12, 13, 14
 15, 16, 17, 18, 19, 20
 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
 ceed the annual value of the premises.

An infant is not bound for instruction in learning and
 buying, because not necessary. The father is to be re-
 garded, I doubt whether he would not sue to be bound by
 such contract. I was greatly altered in this respect. I
 apprehend that instruction proper for the infant would
 bind him. Decided in this that that a liberal educa- 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
 tion is proper for a son of a father of large property.

Infant is not regularly competent at law to per-
 form any other contract than for necessaries. But if
 an infant does that voluntarily which he might be
 compelled to do either in law or equity, he shall be
 bound by the transaction. If he does voluntarily
 what he might be compelled to do at law - bound
 both in Law and Equity. If he does voluntarily in
 Equity, what he might be compelled to do in Equity, he
 is bound in Equity. So if an infant makes a good partition

Parent and Child.

23 Jan. 1794
1112.575
18 Jan. 1794
96.00
10.79
11.15

ie. for a day, he is bound. If he pays out when
bound, he is binding. If he inquires a loose, so if he
lets it down he is bound. unless a writ has been
taken of him. This is the only state of cases in
which infants are bound at law for necessities.

Infant Delt is bound by a decree in equity as by
a judgment at law, except he is allowed what is called
a day in court, to impeach the decree either for fraud
or error. This day is then 4 or 5 months.

23 Jan. 1794
4.15
18 Jan. 1794
2.00
12.00
2.00
11.35

Infant Delt is bound when judge goes
by him at law. He has only 40 methods for a writ
to alter the judgment.

23 Jan. 1794
1112.575

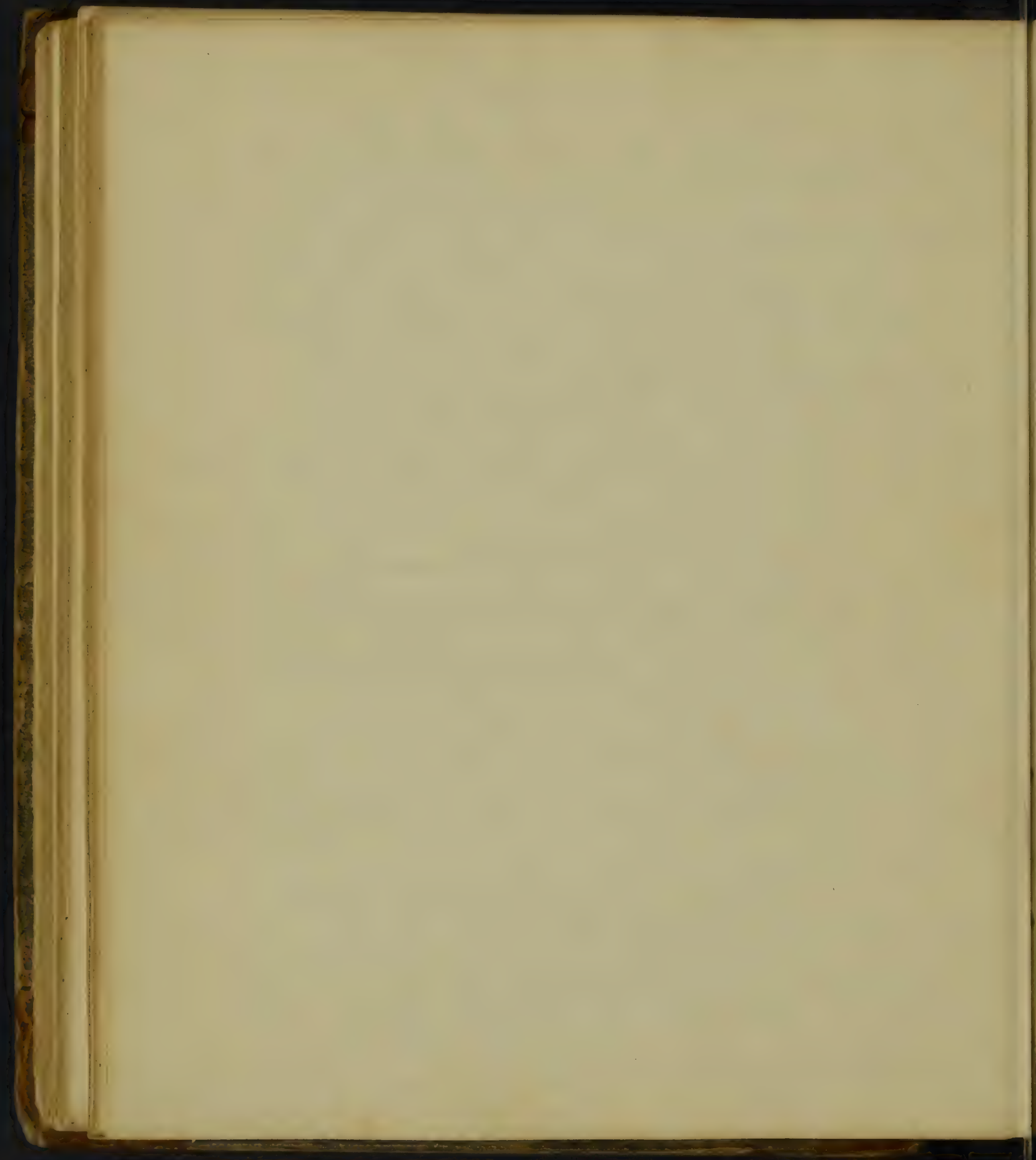
Infant Delt is bound by a decree in
equity as by a judgment at law, except
he is allowed what is called a day in court, to impeach the
decree either for fraud or error. This day is then 4 or 5 months.

Infant Delt is bound when judge goes
by him at law. He has only 40 methods for a writ
to alter the judgment. Infants are bound by a decree in
equity as by a judgment at law, except he is allowed what is
called a day in court, to impeach the decree either for fraud
or error. This day is then 4 or 5 months.

But if the acts of the infant do not affect his own inter-
est but take effect in consequence of a power or au-
thority they bind him. His authority must be such
as he has right to exercise. An infant cannot
do many acts that bind because he acts not for
himself but for another. Infant cannot take away
another's estate or take his things from him. He may not
make an officer that he may hold.

When the legal period of execution has passed,
he may regularly ratify those acts done before, the act
is necessary. At present, the full age with him is an
infant, to the use and of the promise. But it is not
till where the original contract was made, but
only where it is made. The promise is not a contract
by any thing.

When an infant makes an agreement
he cannot ratify this by any subsequent
matter it was void in its inception. But where no in-
fant gives a written promise, which is absolutely void,
and a parcel contract at the time, a promise after

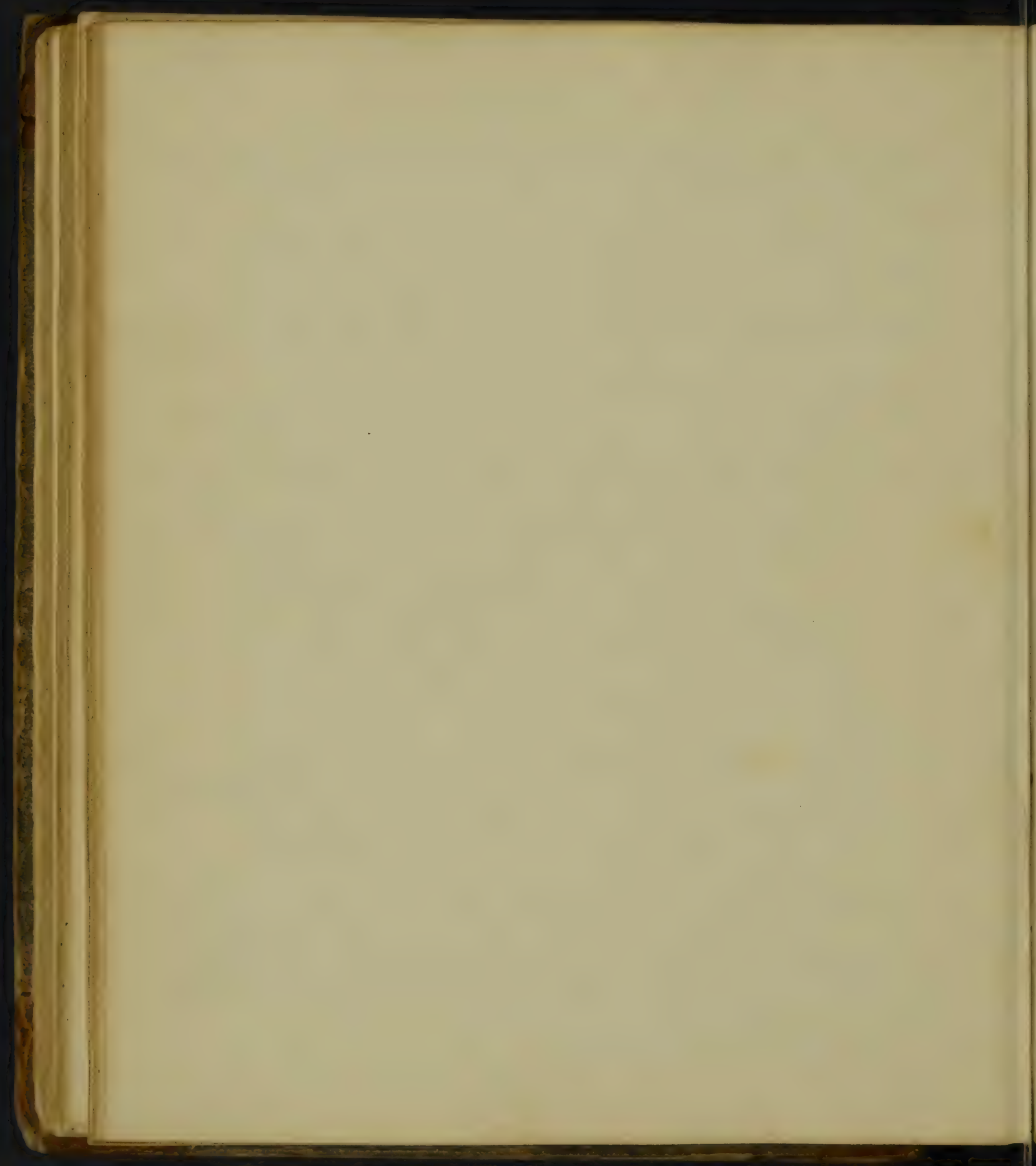


full age will bind him, for the original bond contract is sufficient consideration. Ind. 165
Oct. 164

But the later rule was not held when the written promise is only voidable, for then the former contract being merged does not remain a consideration i.e. a sufficient promise does not bind him. This means that the action must be brought on the written contract, and not on the former oral promise for the instrument merges the former promise and the new promise must come out in the replication in confirmation of the instrument. Ind. 165
Oct. 165
Oct. 164

But where a person after taking makes a new promise in consideration of a contract made during infancy he is bound as far as the new promise extends. E.g. new promise to pay 100 out of the debt. If a plea of infancy, the replication after full age is sufficient and as the P is bound to prove it by proof of a second promise merely. If the debt was then an infant he must prove it - the infant only has the means of proof. Oct. 164
Oct. 164
Oct. 164
Oct. 165
109

If an adult jointly interested with



an infant in a case obtains a renewal of it, in his own name, he shall be deemed to have acted as trustee for the infant - as he is not - and the infant may claim his share of it if it be not dissipated. - does not.

1 Br. 422 296

The renewal is supposed to be gifted to the infant.

If an infant is interested in a cause of action to which his infancy is a good defence, he is not like a feme covert to be discharged on motion, but must defend his privilege.

1 Br. 450

That contracts made by infants are void, & what merely voidable. Those contracts by which they are not bound, are of course not voidable.

If the contract is thifty to the infant cannot ratify it when he arrives at full age, but perhaps it may be beneficial to him and therefore courts are more inclined to consider his contracts as valid than void.

1 Br. 466

1 Br. 468

1 Br. 468

As to what contracts of infants are void or voidable, it is laid down as a general rule that those contracts of an infant in which there is an apparent

Parent and Child

Benefit or influence of benefit to him are voidable
merely, on the other hand those in which there is
no benefit or influence of benefit are strictly void.
The latter part of this rule I shall hereafter
question.

Have the purchases of an infant are but void-
able, for they are supposed to be beneficial as a
purchase of land.

Have also a power of attorney made by an infant
to another to accept writen for him is only voidable.
If therefore attorney accepts writen it is the same as
the infant himself has accepted it.

And upon a similar principle it has been lately
decided that an indenture of service made by an
infant to serve his master as a slave, in a country
where slavery is Abolished is only voidable, for it may
be to his benefit viz. to effect his emancipation.

But it is said that a lease made by an infant
not receiving rent, or if the rent received is very tri-
fling or inadequate is strictly void on the ground
that it is apparently to the disadvantage of the

12th 1802

12th 1802

12th 1802

22d 1804

12th 1802

22d 1804

12th 1802

12th 1802

12th 1802

12th 1802

12th 1802

12th 1802

22d 1804

Parent and Child.

137

Infant. This is given as a case to illustrate the latter part of the rule.

2 Leon. 240
Aug 1800
12 Mod. 162
1100 105
1100 102
1000 921.4
436.533.

But the rule to which the last case is cited as an example seems not to be law, for the case is hardly law. First - it has never been decided that such a lease is void - It is founded merely on opinion -

3 Bunt 186

again - there are certainly very many weighty and authoritative opinions to the contrary as Littleton in his text which is all law. He says leases of Infants (generally) are only voidable - Of the same opinion is Coke. again - to Mansf. in case of Leitch and

1100 1047
2 Dec 304
1000 105
1000 102
1000 102
1000 102
1000 102

Harrison in Burnes says that the lease of infants are only voidable whether rent is reserved or not; for he says he may do it, for the purpose of buying his title, and this is the only way in which his lease can come in question. But it is also true that the lessee can avoid the infant's lease on the ground of his infancy. This is perfect demonstration, for if a contract is absolutely void on one part it is also void on the other.

3 Jun 1806
1000 1047
1000 1047
1000 1047
1000 1047
1000 1047
1000 1047

Parent and Child

Co. 6. 889
2. 1844
1844

another argument which is not conclusive is that
an infant cannot plead non est factum to his
deed. But in some cases an infant cannot thus
plead when his deed is wholly void. I consider
however that it is true that an infant's deed is
not void.

1844

1844
2. 1844
1844

Another case which is said to come within
the latter branch of the rule is that of a penal
bond which is said to be void, because there is
apparent disadvantage as the penalty may work a
forfeiture.

1844
1844
1844

There are many authoritative opinions against
this proposition. At any rate it is open to dispute.

1844
1844
1844

1. A infant cannot plead non est factum to a
penal bond. This to be sure is not conclusive, for he
cannot thus plead to a bond of attorney that is
wholly void except it is one to which replevin
has never been decided that it is void.

2. But there is a class of decisions in Chancery incon-
sistent with a penal bond of an infant being void.
For it is well settled that if an infant having one
into a penal bond requires the person at whose request

to pay his debts and obligations, and dies then? will
 compel that to be paid. Now either these decisions
 are not law, & his trust bond is not void. Or since
 it being considered as voidable with respect to all
 the purposes which it can be considered
 as void. So if there is no benefit to him he may
 avoid it. But as to the decisions in Chancery they all
 go on the ground that the bond is only voidable, for
 if it is void, it is a mere nullity, it does not exist,
 and therefore never can be paid. Think therefore
 on this point a bond of an infant is not void.
 Yet I believe the prevailing opinion is that it is
 void, and on the ground of authority.

Then too are the only examples given in support
 of the latter part of the rule viz. that contracts
 of an infant are void where no benefit or advantage
 accrues to him. The first is clearly not law, and
 the last is not a principle. The authority is an
 authority. At any rate it is not a general rule.
 For there is but one case which comes within it,

Law at 1841

of course as a general rule it is not law.

There is however another general rule which with one qualification I take to be the correct one - It is this - All gifts, grants, sales, deeds or obligations made by an infant which do not take effect by manual delivery are void, those which do thus take effect are valid & only. This is the position as drawn by Polk's a writer of high authority on contracts and conveyances. Parson's case by Littleton & Littleton's case and the case of King's bench.

Thus the rule as to taking effect by manual delivery is manual delivery, conveying or passing a right or interest by manual delivery. Ex. a gift made by an infant is completely voidable, for the interest passes by manual delivery. If paper is in the interest interest is the paper which is livery of seisin. Ex. If an infant sells a house or any other interest and it is delivered, the sale is only voidable but if he sells it by contract merely,

anno. 18
19
Littleton's case
Luttrell
1841
1842
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1860

Parent and Child.

134

Nov 1897

without delivery it is void.

As to deeds the words "take effect" constitute a difference between instruments which convey an interest and those which delegate a mere power or authority. The first are only voidable, the latter are absolutely void. As a grant in trust made by an infant, or any species of common assurances known to the law.

Sett. 1899

Dec 1899

Jan 1904

1899

So a power of attorney, executed and delivered by an infant is absolutely void, except a power to accept seizen. The infant may heat it up nothing from the beginning. Thus an infant makes a power of attorney to B to convey or lease his lands. His conveyance is void to C - C enters - The infant may immediately sue him in trespass. A power of attorney does not help to waive a delivery.

This exception is the negative branch of the rule. And in England a power of attorney executed by an infant is set aside in a summary way on motion. A power of attorney to accept seizen is not within

Jan 1899

Dec 1899

Jan 1900

Jan 1900

Jan 1900

Jan 1900

Parent and Child.

1845 The rule, to the words "which take effect" &c. apply only
to gifts, grants, sales, &c. or obligations.

From what has been said it follows that purchases
by an infant are only voidable, but contracts by
him which do not take effect by manual delivery
are void when they do take effect, voidable.

The rule I observe requires a qualification, and
with this qualification, I think it wise to universal-
ize, where there is no apparent benefit or sus-
tained benefit to the infant, i.e. the rule that those contracts
of infants which take effect by manual delivery are
only voidable is to be qualified as modified in part
thus by the rule that there is to be a benefit or
1847 sustained benefit to him, or that he is to be
1848 apparent disadvantage to him. (1.) Where an infant
contract made a contract with a hair dresser to get
him two curls of her hair - To obtain it he had to
show he had a curl completely - He brought no action
apparently to recover damages - He did recover -
This was a sale of a thing which he had by manual

Delivery. The rule only contains delivery, the
 he was, there. into this word to any inaccuracy.
 The court therefore qualified the rule. There may be
 many other sufficient cases, equally valid.

The rule of delivery is not strictly applicable
 to simple contracts. In they do not in strictness take
 effect by delivery. The case of higher contracts either
 by parol or by writing under seal are not within the
 rule, and are only voidable.

General rule that executory contracts are only void-
 able. See single title in reciprocal act, parol
 agreements.

Simple contracts are voidable not as an exception
 to the general rule, for delivery is not applicable
 at them. 'Lind 53'
'Mort 25'
'17

At law of submission to a settlement is but
 voidable. This within the general rule. 5 B. & C. 336
'10y 93
'18. 11 730
'Lind 17

If a contract is void that persons who have an
 interest in it or the adverse party himself may take
 advantage of its invalidity as recipients of a fraud-
 ulent conveyance.
 But if only voidable, then no other

Parent and Child.

that the party for whose benefit it is made it and his representatives can take advantage of it.

If a father has a house and delivers him his only child, and no power can take advantage of it, but the infant and his representatives, can take advantage of it but if not delivered is absolutely void, and this principle the above party may take advantage of it.

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The representatives here spoken of are those who represent the party whose interest was affected by the contract.

If a voidable conveyance is made of real estate only the infant and his privies in blood i.e. heirs, can take advantage of it.

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His privies in estate as Remaindermen and Reversioners cannot take advantage of his infancy and come into possession.

A very distinction between void and voidable contracts is, that the former can never be ratified, the latter can. A void instrument is as if it had never been made and admits of no subsequent ratification for nothing to ratify. This confirmation of

a voidable contract may be either express or implied,
after the infant attains full age. E.g. of implied
ratification. an infant lease continues in force after
after he attains full age, he then ratifies it, and
becomes liable for the rent even that which accrued
during his minority, if he ratifies it at maturity.
2 Bulst. 69
17th. 131. 2.
3 BAC. 504
2d. 30
C. 320
2d. 213

an express ratification needs no definition,
it is an express assent.

In general any act of an infant evincing
an instant intent to waive his privilege of in-
fancy after he comes of age, is an implied ratifi-
cation. A void contract admits of no confirmation
36. 65
1st. 275
171
1st. 690
2d. 103

As a void contract admits of no confirmation
in a novation, it is as if it never had been. As a void
contract. E.g. Infant lease takes a new lease of the same
interest, neither increasing the time nor diminishing the
rent the former lease is void.
2d. 766
3d. 4.
1st. 875
2d. 53
1st. 701
482
1st. 354
77. 893

Distinctions in the time or times at which an infant
may avoid his voidable contracts.

If an infant makes a conveyance by fine, he
cannot avoid it after full age, he must avoid it before

Re out and in.

It cannot be done by writ of Error.

Reason is he is not at liberty to make such an agreement to be tried by the country against the record.

13. 1. 180

12. 2. 195

12. 10. 191

12. 10. 191

12. 10. 191

For his age is to be tried, and in this way only, by inspection by the judges.

12. 10. 191

12. 10. 191

12. 10. 191

It is said that an infant's conveyance by matter in fact i.e. any matter except a record is avoidable either during his minority or afterwards.

But what is this law as to, that an infant's conveyance can be avoided before he attains full age. I think not true. Well, I think now that a conveyance by an infant cannot be avoided after he attains full age. For his conveyance itself is not binding, and of course the original conveyance remains only voidable and may be confirmed at full age. If a stranger cannot avoid himself of the conveyance.

12. 10. 191

12. 10. 191

12. 10. 191

The rule is the same as to an infant's conveyance by lease and release. If an infant makes a lease for years. This must be the meaning of a rule

laid down in a modern case by Justice Buller viz. that
 an infant's lease binds. This means that it binds him
 during minority. Sales of personal prop.^y by an infant
 are voidable at any time I suppose.

23.8.161
 8 a. 137, 8
 12.11.90
 2 Bull. 69
 3 Mac 441

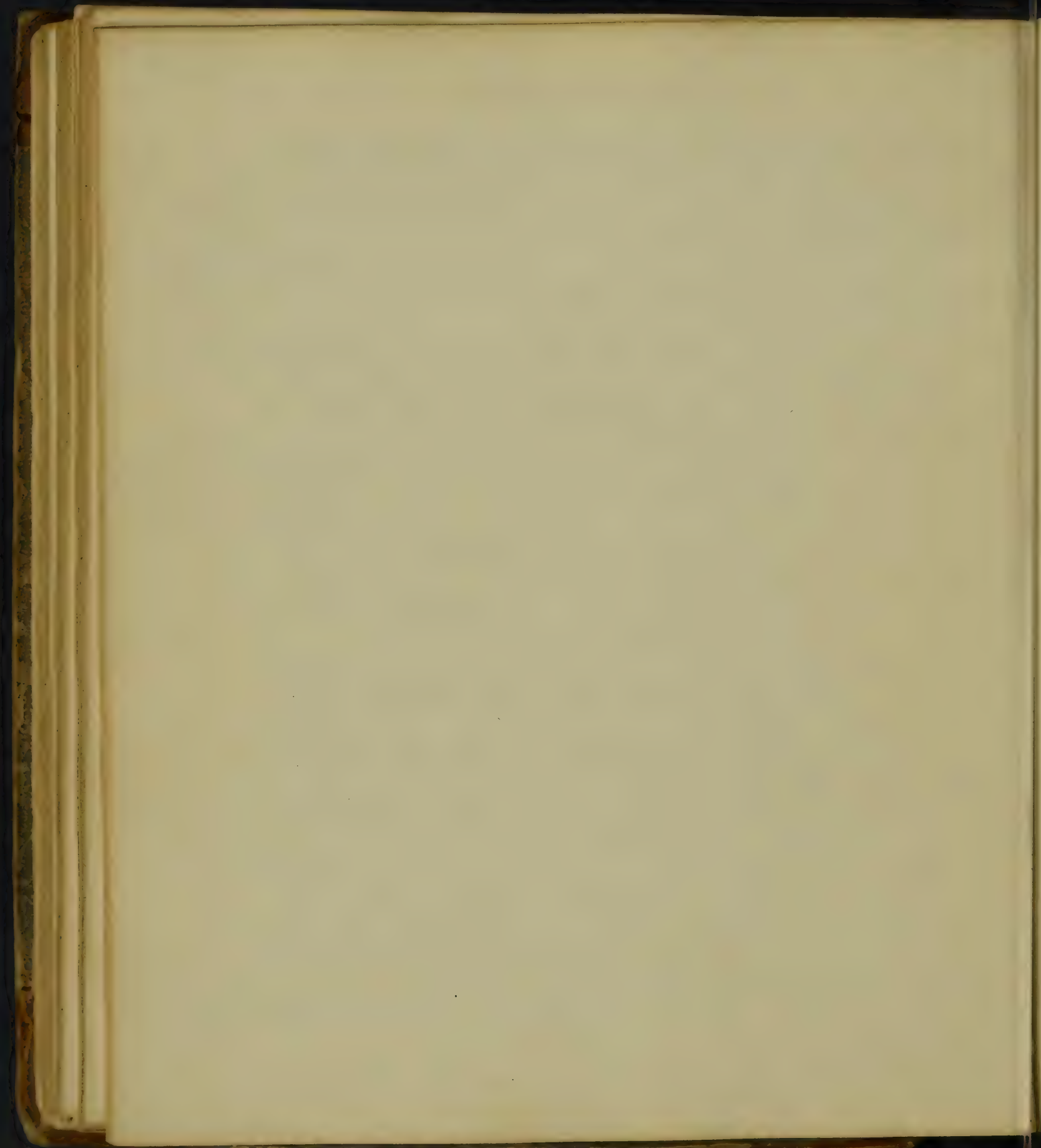
There are certain except cases in equity, not
 within these rules, but cognizable technically in Chan.
 The high court of Chan.^y assumes a lot of discretionary
 control over infants and directs their consciences according
 to the circumstances of the case and enforces many
 contracts which at law are not binding.

The King in law is the guardian of all infants,
 and the authority is delegated to the Lord Chancellor.

He is in law the Paramount Guardian of all the
 infants in the Kingdom, under the King's prerogative.

By this is not meant that the Chancellor may
 enforce any contracts ag. infants he pleases. No, in his
 discretion is to exercise a sound legal discretion, and to
 discover this sound legal discretion, he must consult
 the precedents.

Marriage settlement agreements made by infants



with the consent of parents or guardians are in most cases binding in Chan^y

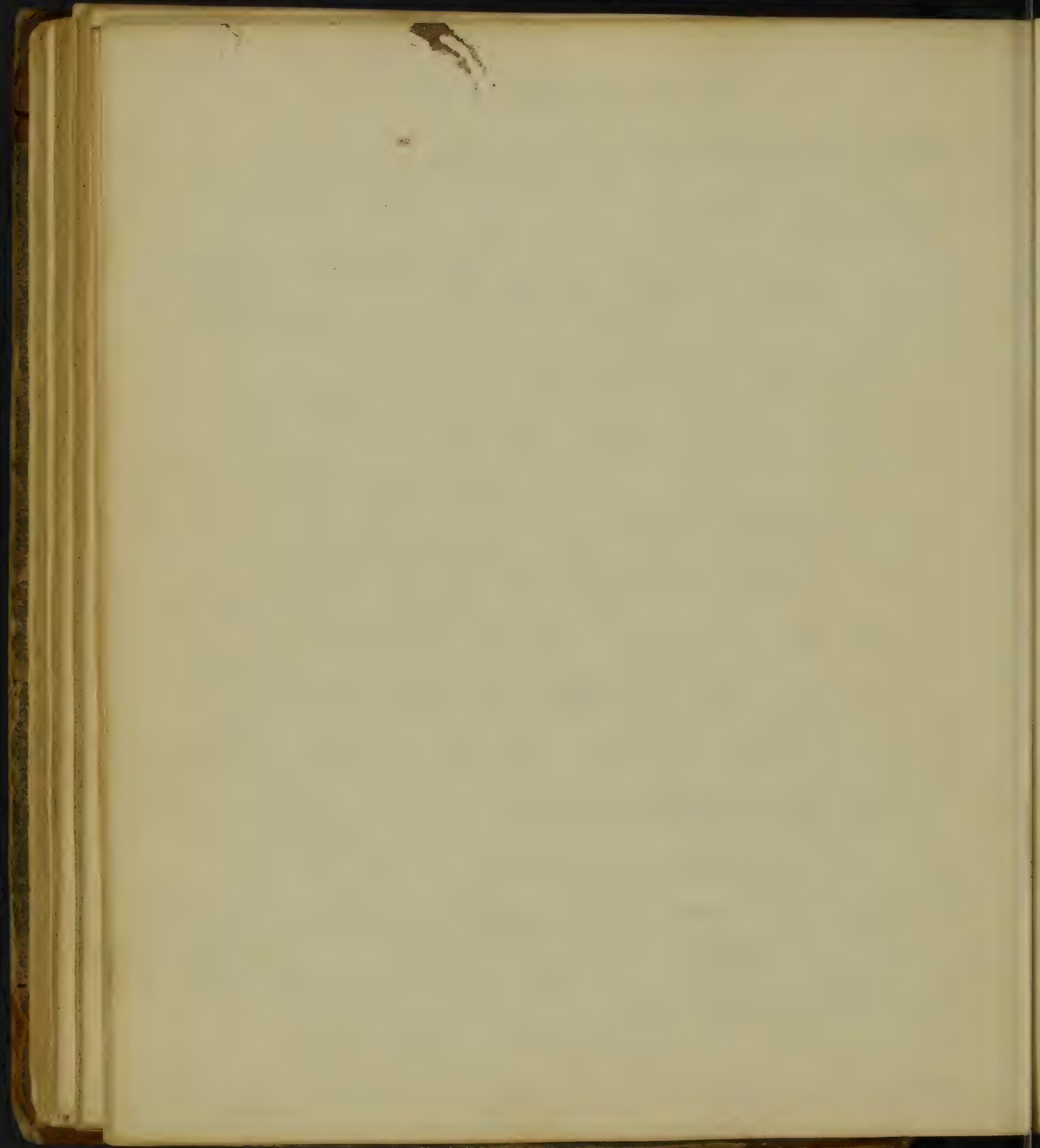
Reason why there are entered in Chan^y is to ensure that all contracts in conformity to the principal contract of marriage. 1 Bro. C. 4280
3 Atk. 6
1 Bro. C. 152

Let yet further settled how far a Chancellor may proceed in his discretion. to grant relief when Chan^y will enforce their contracts or not. Therefore they are bound by precedents and some cases are settled.

I decided that the interest of a female infant in a money portion is bound by a marriage settlement agreement made before marriage. no difference whether the wife's interest is in possession, or depending on future contingency. Also well settled that by such agreement i.e. one made with consent of parents or guardians, a female infant may lose her dower by accepting a jointure made before marriage, expressly in bar of dower, and even tho the settlement is of personal estate. 3 Atk. 14.
1000. 501
Baron de 117
1000. 74
p. mod. 101
1 Bro. C. 46

non-tenancy. Also well settled that by such agreement i.e. one made with consent of parents or guardians, a female infant may lose her dower by accepting a jointure made before marriage, expressly in bar of dower, and even tho the settlement is of personal estate. 5 Mod. ch. 573
1 Bro. C. 101
1002
1000. 55
1 Bro. C. 58

But some doubt in the books whether a male infant may lose his real estate.



And it is not decided. It has been decided that a male infant has testifies was bound by such agreement with consent &c and this is real property.

By real estate is supposed in the rule is meant property of an estate of inheritance.

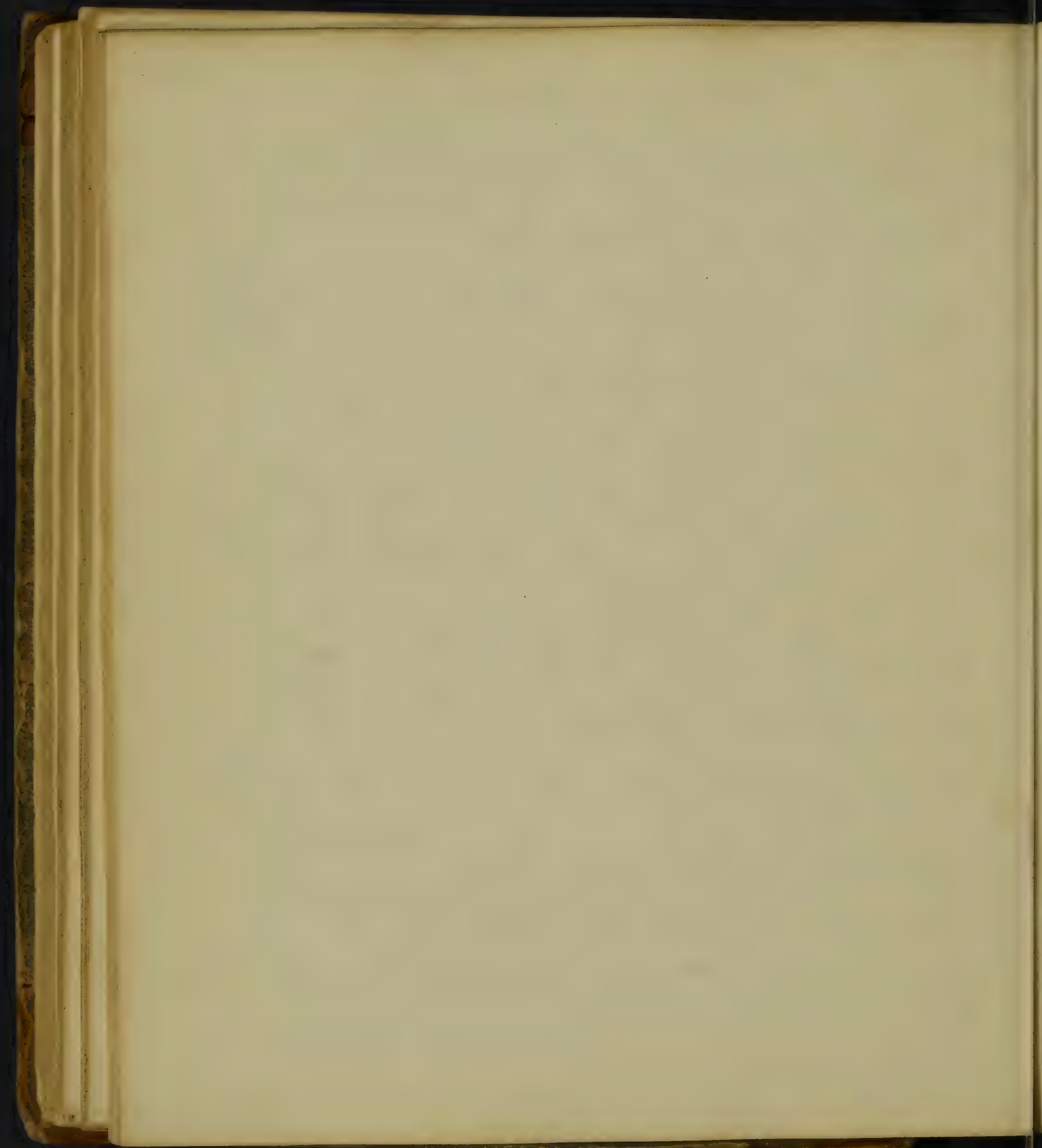
1. And. 38. 50
1. 2. 11
1. 2. 11
1. 2. 11
1. 2. 11
1. 2. 11

Held by Lord Mansfield that if a female infant agrees in her cohabitation or marriage, with consent of guardian and in consideration of a competent settlement to convey her inheritance to her husband, Chancery will execute the agreement.

This says Lord Mansfield is going a great way, yet there are cases, where the courts will do it, viz. where the settlement is by the husband is an ample and adequate consideration and the wife is satisfied &c.

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Lord Thurlow says her real estate is not bound unless she has a settlement, and after her death, takes possession of it and that the court should not go into an inquiry respecting the competency of the settlement. He then is of opinion it seems that a subsequent ratification after the wife becomes 'sinecure' is necessary. See there.



One point is clear that a female infant is not bound by such a contract respecting her real estate unless made before marriage, If made after she might be coerced.

2 Bull. 314

3 Atk. 36

1 Port. 70

It is clear also that if a female infant on marriage with an adult, covenants that her estate shall be disposed of in certain uses, she is bound by it, for such a contract does not affect her own interest.

1 R. & B. 544

1 Benth. 70

But it is said that an agreement made by an infant on marriage with a man to convey her or his real estate, will ever be enforced, unless his fair and reasonable and upon adequate consideration.

2 R. & B. 244

1 Port. 47

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1 Port. 69

3 Atk. 615

1 Benth. 115

116

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If an infant capable of making a will bequeaths personal property for the payment of his debts, Exec. is bound in equity to pay them. This is occasionally founded on principle, for if he can order money to be paid to an indifferent person, he surely can direct it to be paid to his creditor. Indeed Mr. Gout considers it as a legacy to the creditor, to the amount of their debts. For during his infancy it is impossible for him to ratify a contract. It must be by way of legacy.

1 R. & B. 252

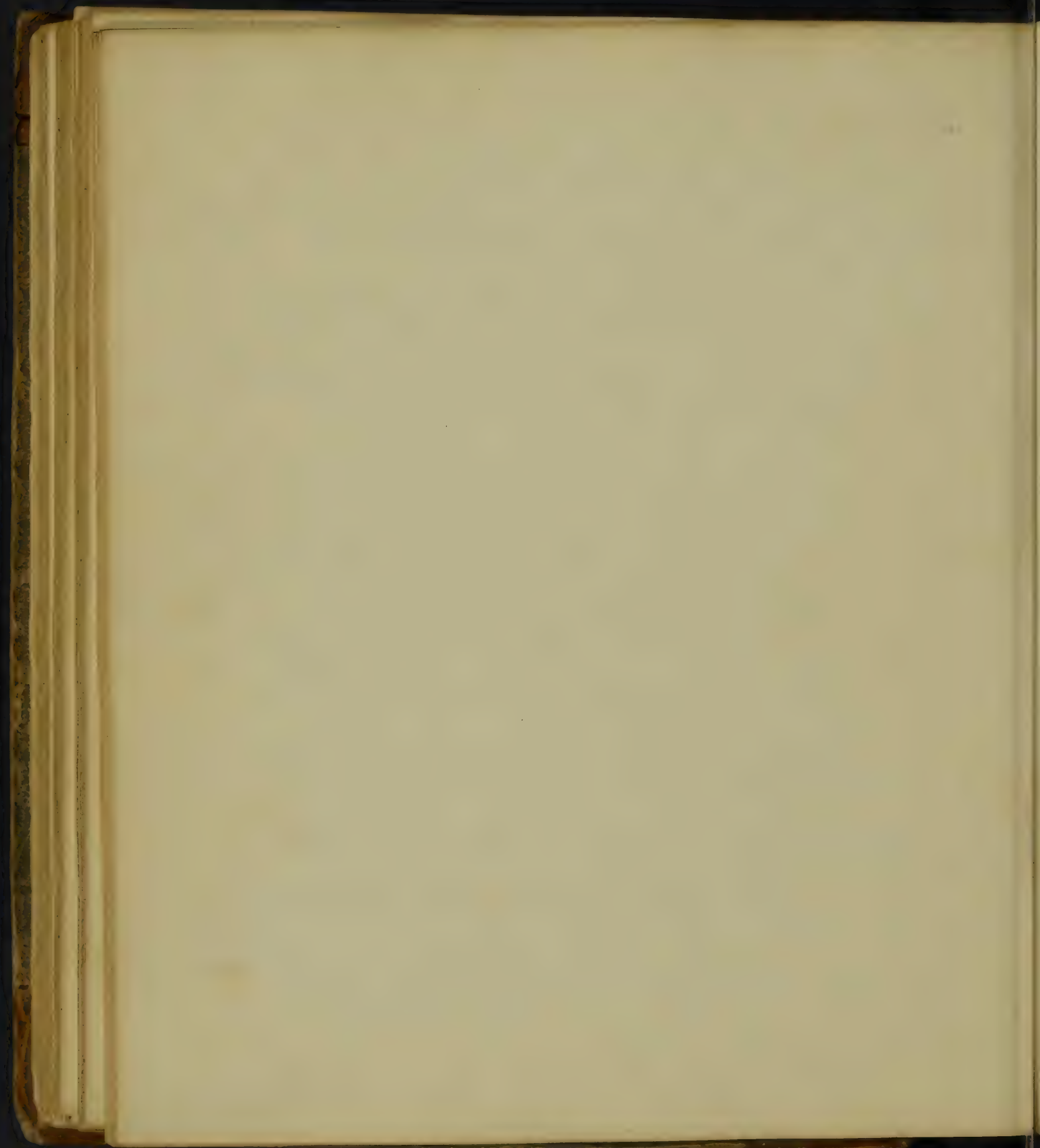
3 Atk. 146

1 Port. 37

1 Wood. 403

1 Benth. 71

Infants contracts may be ratified at law, after



full age (ante). So in equity a contract made by another, or an infant may be implicitly, as well as expressly, ratified by him after full age. E.g. lease of land to a wife, to 6 children for 41 years by their mother. They ratified the rent for a long time after they had attained full age, 10th 1859. This was considered as an implied ratification of the lease.

What powers an infant is capable of exercising.

By the word power here is meant an authority delegated by one to another.

General rule that an infant cannot execute a general power over real estate. A general power is a discretionary power, and that he cannot execute, because the infant is not supposed to possess discretion.

But an infant may execute a naked or special power over any estate. By a naked or special power is meant a power to be exercised in the manner directed by the authority. Here no discretion is necessary, as it is a mere instrument or conduit pipe, having no interest which can be affected.

That an infant cannot execute a power over his own inheritance, because it may work to his disadvantage. Such a power is void.

Parent and child.

It is within that there is no precedent either in law
or equity of a power being executed by an infant over
real estate. This is incorrect and amounts to no more
than the rule that an infant cannot execute a power.
This is reported in many cases
is more correct generally than either.

It seems from the rules given that an infant
of interest may execute a power as to his
interest to the extent of it; if it does not amount
to a discretionary power over real estate.
This I take to be the true general rule.

And an infant may execute even a general power
over personal property and the true rule is
as stated, provided he is of sufficient age to execute
the power by will. Seems of a general power over
personal property if not of age to execute it.

And where an infant being tenant for life
with power to make a jointure on his intended wife,
executes in pursuance of the power, he holds a
certain part of the land to his wife for life. The cov-
enant is then held in equity.

This is not inconsistent

with the rule that an infant cannot execute a power
over his real estate. Now does it affect his own interest
for his interest was only for life, and this cannot be affected
by a disposition which is not to take effect till after
his death.

What offices an infant may hold. An infant may

(as a general rule) hold a ministerial office the execution
of which requires only skill and diligence. but
can never hold a judicial office. E.g. He may hold the
office of Bailiff, Justice, Sheriff &c. These only require
skill and diligence in their execution.

But with regard to ministerial offices, an infant
may hold them, even tho he cannot execute them in
person, because he may execute them by Deputies. These
deputies must be appointed etc. Gould thinks by Guardian
or Lord Chancellor.

It is hence it is that at law many ministerial
offices may be made to run in his name. These offices are
considered as property and are transmissible.

cannot exercise.

I conclude then that an infant can hold an office except it can be exercised by deputy, this is the reason for this is the reason always given in the books, and hence if it cannot be exercised by deputy, he cannot hold it even tho the office is ministerial.

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But an infant cannot hold the office of an Attorney, because he has not discretion to take the oath of office ^{could} he cannot exercise it by deputy, and it requires discretion.

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note.

But can an infant in any case be a juror, and take the oath, but I think a juror absolutely requires discretion, and this is the reason.

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An infant of any age may be an executor tho he cannot act till 17 years old.

But as the law allows infants to execute certain offices, it regularly binds him by his own official acts, & of course is liable for breaches of his official duty. The infant's privilege must yield to legal authority. E.g. An Infant Goaler is liable for an escape, liable in debt if the escape is in execution.

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How far an infant is affected by the nonperformance of conditions annexed to his office or estate. These conditions are of two kinds, express and implied.

By express conditions infants are treated like adults. Thus if an infant sells an estate to which an express condition is annexed, a forfeiture is annexed to the estate by his own act.

The law is created by statute. The infant has a right to sue and be sued. The infant has no reason to sue. It is no more than an adult. The estate goes out of his hands on the ground that the condition shall be performed.

13th 146.
2nd 560
335
243
2nd 21
1st 149
2nd 141
1st 413

But said to be an exception to this rule where the condition imposes a heavily distinct from the top of the estate. In such case the infant is not bound to pay the penalty. There is an obvious reason for this distinction, for if he were bound by the penalty, the infant might be ruined by it. If he were bound by a penalty to any extent he might be ruined to this extent. In the former case he cannot lose more than he receives and no injury can happen to the

Point and Philo.

10. 12. 00 infant. the penalty is in this case a measure of retaliation
 11. 12. 40 in position. the law will not permit.

the law is not by the former state of affairs it is not by
 the law of the state of affairs it is not by the law of the state of affairs
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his state by statute rather voluntary or compulsory. But the Stat of Gloucester gives an action to recover the thing wasted.

Nov. 21/11
Co. Litt. 311^a
2 R. 339
2 R. 743
3 R. 11/4
8. 10 1/2

But where the Stat law gives merely an entry, but in every instance is not limited by the condition. E.g. Infant alien in wardship or tutelage. But gives the land only an entry, but no action to recover the thing wasted.

Nov. 21/11
Co. Litt. 311^a
2 R. 339
2 R. 743
3 R. 11/4
8. 10 1/2

Mr Gould says he is in a reason for this distinction. In the Stat, when a Stat gives a remedy it is freely taken away his privilege was in the last case his remedy is limited, which is in the Stat.

Infants are treated like adults by Stat of limitation, unless they are otherwise provided. But in general the Stat of limitation is in the nature of conditions annexed to a right.

Nov. 21/11
Co. Litt. 311^a
2 R. 339
2 R. 743
3 R. 11/4
8. 10 1/2

And if an Exec^r Admin^r or trustee for an Infant does not sue within the time prescribed by the Stat he loses his remedy and the infant is barred by the Stat.

And this is the case even though there is an exception in favour of the infant. This rule must relate to

Parent and Child.

cases in which he does not have a right to sue in his own name. This rule holds both in equity and at law.

But when the infant himself is the party to bring the suit he is not barred where there is no exception in favour of infants. That of limitation in this case does not run against the infant. So if an infant on the death of his father is disappointed, have the Statute of limitation does not run against him. So if a legacy is given to an infant.

As to the former rule, in an action or a writ of habeas corpus, a trustee neglects to sue for 17 years, the infant is barred by the Statute of limitation and is barred. The infant's remedy in this case is against the executor &c.

As to what manner infants are to sue and be sued. I have already treated of the rights which infants are to acquire, and of the duties which they may owe by their own acts or those of the means of respecting their rights and performing these duties. A person infant is to sue.

As an infant when he sues must

always appear by his guardian or next friend.
 He cannot appear by Attorney, for he cannot appoint
 one.

And if an infant without Guardian &c. *Def* 30.301
 may plead to his disability. If it does not appear in the
 writ that he appears by Guardian &c. *Palm 296*
1st 1454
2nd 297

But according to the Com law an infant *Def* 30.301
 appear by his guardian only, but now the Stat 132 West? *Palm 296*
 enable infants to sue by their next friends in certain *1st 1454*
 cases viz. of necessity. *2nd 297*

The cases in which infants may sue under these Stat
 are four.

1st An infant may sue by his next friend *Def* 30.301
 when the action is brought against the Guardian. *Palm 296*
1st 1454

2nd Where the suit is to be brought as a stranger *Def* 30.301
 but the Guardian the consenting, yet refuses to appear *Palm 296*
 in court - the Suit. The Guardian must consent or the *1st 1454*
 infant cannot sue at all I suppose. *2nd 297*

3rd An infant may sue by next friend when
 he has no Guardian. *Def* 30.301
Palm 296

4th An infant may sue by next friend when he has *Def* 30.301
 been removed from his Guardian i.e. when out of Guardian's care. *Palm 296*
1st 1454

Parent and Child

300 1101 In all other cases than those infants must appear
 300 1102 by Guardian.

300 1103 Some opinions that an infant may always
 300 1104 appear by next friend or guardian at his election.
 300 1105 This I think is incorrect. So Guardian would
 300 1106 have no control over his suits.

300 1107 If a woman is to be brought by husband and wife, the
 300 1108 being an infant, she need not appear by Guardian,
 300 1109 but may appear by Attorney named by the husband.

300 1110 When an infant sues by Guardian the latter is liable
 300 1111 for costs, and next friend, when the judgment is against
 300 1112 infant and execution will issue against Guardian &c. He
 300 1113 is not liable to give security for them, and he is
 300 1114 liable to an attachment for non payment.

300 1115 According to two opinions the infant is also liable
 300 1116 for costs, and left to his election proceed as
 300 1117 may.

300 1118 But this rule laid down by P. W. has been
 300 1119 overruled in a hearing, by Ld. King, who said that there
 300 1120 was no decision that an infant left to his election to
 300 1121 sue in law or equity.
 300 1122 This seems on fair view the better

opinion, the guardian has complete control over the action.

A parent or guardian need not find pledges for prosecution - reason, not liable for amendment, but costs are a substitute for the same amendment. 12.7

But an infant who is charged with a tort is liable; the 211
and his guardian is liable for the tort if it is a fault and the guardian is liable to the court and is liable to the tort. 12.7

With regard to the high manuscript on that Guardian of an infant will be liable to costs. Guardian's interest is not affected by it and no control over the suit. 12.7

According to the high manuscript when an infant is brought by guardian to next friend the guardian must be admitted by the court - before whom the suit is brought or by a writ out of the court that the infant may not be injured. 12.7

In court when suit is brought by guardian, court have power inquire into his qualifications to become, in the guardian is admitted by law. But if by next friend, it is to be admitted by the court, the a tacit admission

Parent and Child.

1844
1845

is not to be sufficient. But it has since been decided
that such an appointment is not sufficient but that there
must be an actual appointment.

Any person who may bring a suit, or commence
suit, or a suit, or a suit, or even without
his consent - for he brings it at his own peril as it
reflects on his credit and may discharge him.

1846
1847
1848

The court consent to the suit is not necessary. By
the court consent that it may be made for the
benefit of the child.

An infant and an adult are to be treated in the same
manner with regard to appointment by attorney, and if
a suit is brought by the infant the suit is in
order and it.

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But if the infant is not an adult and the other adult
is not an adult cannot appoint an attorney or by
himself infant if must always appoint by parent
or guardian or by the court or by the court.

And if infant the parent may appoint an attorney
because the parent is in sight of another.
But this does not give him any greater discretion

It is different in case of infant, since we are
 not to the difference, and I am sure that the rule
 as to next is not true, and so that denial of the fact
 that if an infant has ~~express~~ next of kin, he must
 appoint a person of attorney within one year of his
 administration.

If an infant is to be next of kin.

At infant left must always appoint his next of kin,
 not by himself in any. For the Stat 152 next of kin
 not subject to election by infant.

The Stat is signed by the guardian.

And in action of husband and wife, the wife
 being an infant, she must appoint by guardian.

If an infant having no guardian is next of kin, the
 next of kin must appoint one for him, and the guardian
 is to be appointed.

But if the infant has a guardian, the next of kin cannot
 appoint one de litore until the guardian is dead, at the next term of
 the court, or has withdrawn from office.

The next of kin can never appoint one because
 the guardian is not deceased. Time is given to cite

Parent and Child.

Law to appear at Court this is the practice is usual

By the Judge in the general rule is unusual
to bring out the question of the infants power as
state but an appointment for his suits in general

5 Dec 1844
mb 66.5
10.42
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the parent at all that, is one apprehensible by
the court in which the action is brought.

If an infant met appears by attorney, and
judgment is given by him it is erroneous and
may be reversed, but by that of the court if the
court is in his favor and upon a verdict it is
good and not erroneous. This seems to imply that
when judgment is not entered he is not bound to
petition the court. This is law here.

5 Dec 1844
mb 66.5
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That the judgment of a court concludes with a
certification as to the validity of the judgment.
If it is not valid it is not valid and judgment
may be given by default.

5 Dec 1844
mb 66.5
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If an infant meets with others who are adults
and by attorney and entire damages are given
against them. The whole judgment is erroneous and
therefore the court cannot affirm the damages.

1881
1882
1883

Personal bills.

great improvement
at the time being revised, and at some
point in the future, and then dies
the estate is within a year and a day after the
death, and it is not in any way to be made.

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but it is not in any way to be made,
the estate descends to the heir presumptive.
and take by devise as the law now is.

and take by devise.

the distinction recognizes. It cannot be
and take by devise as well as with;
and take by devise in future.

Legitimate Child.

According to modern the distinction between legitimate
and illegitimate children.

Their respective duties are different when referred
to their respective classes of relations.

What then who are legitimate and who are illegit-
imate or bastard children.

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A legitimate child is defined to be one born in
lawful wedlock & within a certain time afterwards.

1847
1848
1849
1850

That is no other than a child thus born can be legit-
imate. But it is not true & incorrect that every child
born at wedlock is legitimate - the prima facie is so.

1851

An illegitimate child is defined to be one begotten
and born out of lawful wedlock, & in other words
not begotten nor born within lawful wedlock.

This definition also however is incomplete.
It is that after the conception and the parents
voluntarily state that the future child before the
birth must thereby be child is illegitimate accord-
ing to the strict definition.

At what distance is this one together out of
lawful wedlock, and not be, either during lawful

we check, or within a competent time & then & so.

The more definition of a legitimate child amounts only to this that if a child is born during lawful wedlock, the presumption is that he is legitimate.

Presumption is very strong.

12th 457

It is anciently in other kind of illegitimacy was admitted in such a case that not a genuine legitimacy in children, and this fact was to be so

to Lib 244th

only in two ways 1st By showing impossibility of access to the wife by the husband 2nd By showing his impotency.

9th 457

1st 457

9th 457

to Lib 123

1st 457

But much more so.

Presumption not sufficient.

to Lib 453

1. Namely no other proof of non-access was admitted than that of husband's absence extra parochiam from the time of conception to the birth. & how as within the year not proven.

to Lib 144

to Lib 374

to Lib 10

to Lib 1123

1483

to Lib 457

Exp 1533

to Lib 11

to Lib 101

1st 457

Thus if the husband had been absent for any length of time, and his wife should have a child at any time, however soon after his return, the child

Leont. m. m. m.

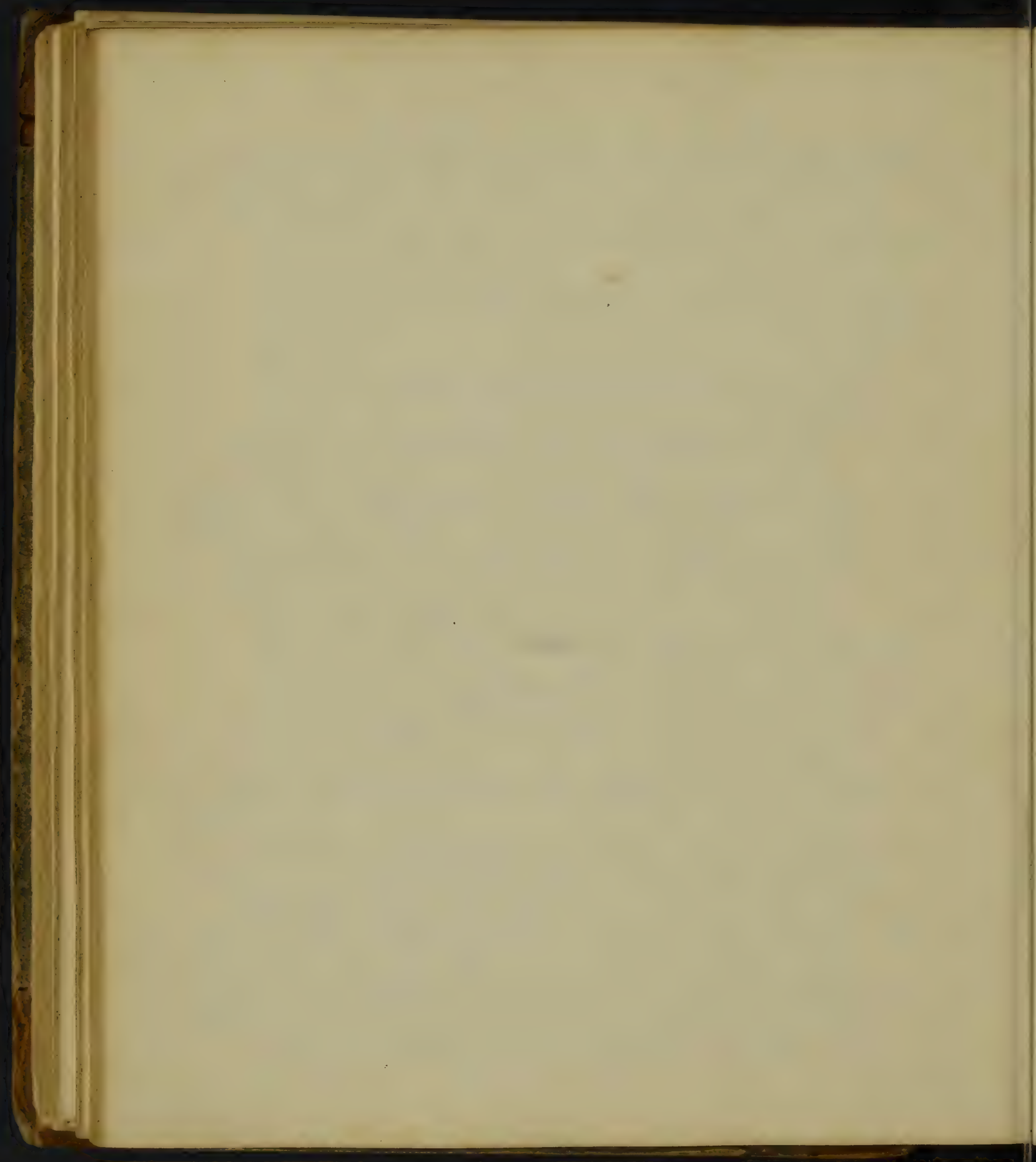
2. Intoxication may also be proved by other evidence. *Chas. 1853*
 From want of age or by husband's state of health. *1854*

There is also the case of a child in the arms of its
 mother, then what amounts to an apparent in-
 capability.

Let us suppose that the evidence then that of
 some other child is admissible to prove illegiti-
 macy. If that the mother is childless and yet has
 that the child is illegitimate and that the mother
 of J. C. is that the mother took his name. *1854*
1856
1858

It is not to be seen that improbability only is to be
 proof of an accomplice in illegitimacy.

The issue of a marriage which is null at birth is *1856*
 illegitimate. In case of a child born of a parent *1856*
 existing before the marriage and continuing it until *1857*
 but that the legality of a marriage not absolutely null
 can be raised in question only during the lives of the
 parties. *1858*
 The issue cannot be contested after *1858*
 the death of either of the parties. *1858*
 and such.



A child is not to be a party in a contract
 made, or promise to be illegitimate, although in case of
 voluntary prostitution. Prostitution in both cases may
 be rebutted. C. 151
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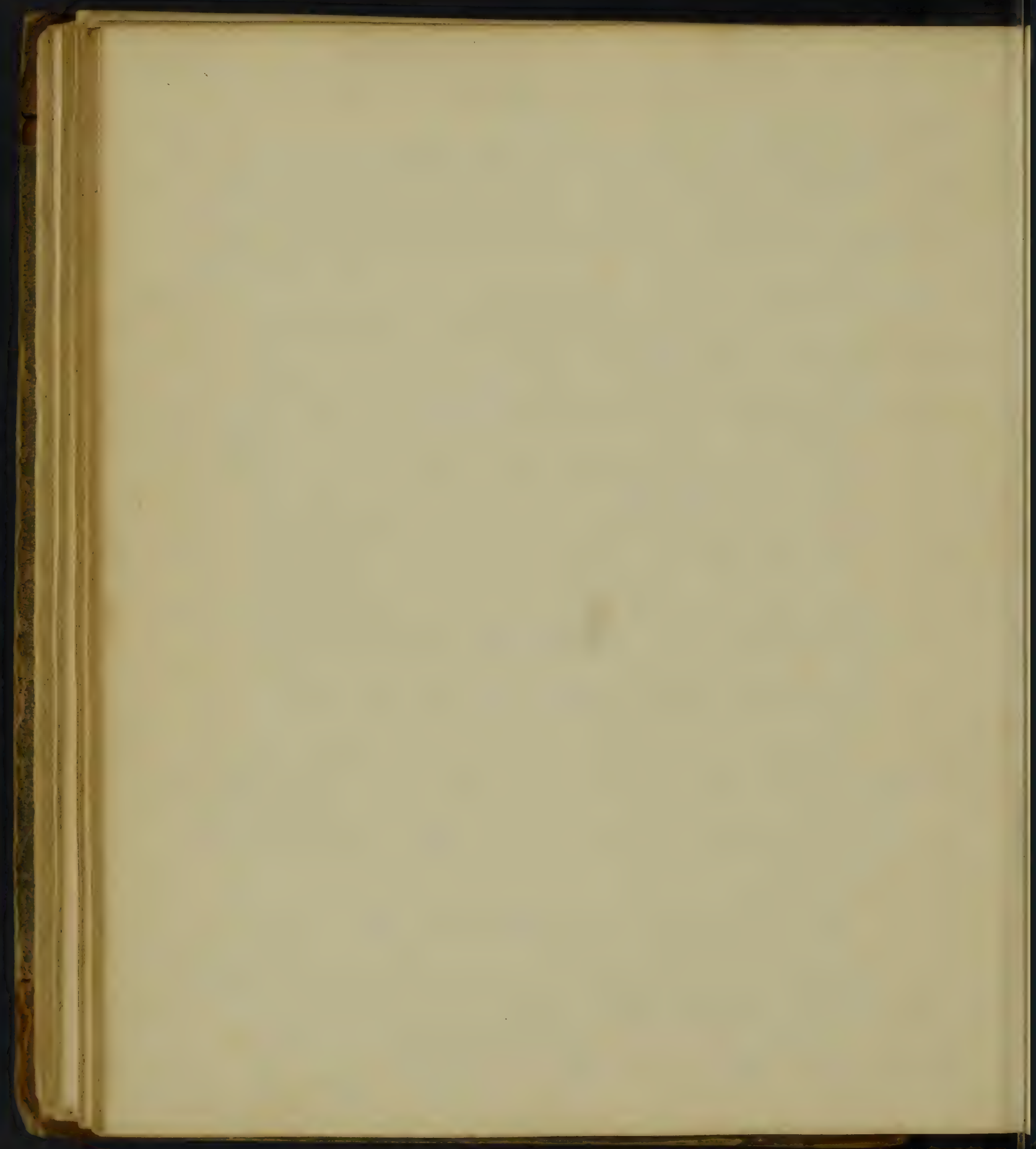
Where the child is illegitimate, the father is not
 bound to support, the wife not admitted to have a right
 to be so, but she is admitted to have her
 own maintenance. C. 151
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The same rule is founded in decency, morality and
 decency - & justice.

It is required that to have the time of the child's
 birth, so is the husband. C. 151
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The declaration of the father is to the
 child being born before their marriage may be proved
 after their death. This is not to be taken as a rule
 during need look to the answer in hand by either
 to good evidence. C. 151
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A father's common reputation in early in a family
 like an inscription in a tomb, that he is a good or bad man
 is the time of a child's birth. C. 151
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by a subsequent intermarriage of the parents, &c. &c. &c.
by the mother &c. &c. by one man.

As to all children born of a widow or lady, it is necessary
to state that by the natural course of gestation they are
not to be taken as bastards, but born within a certain
period since the marriage.

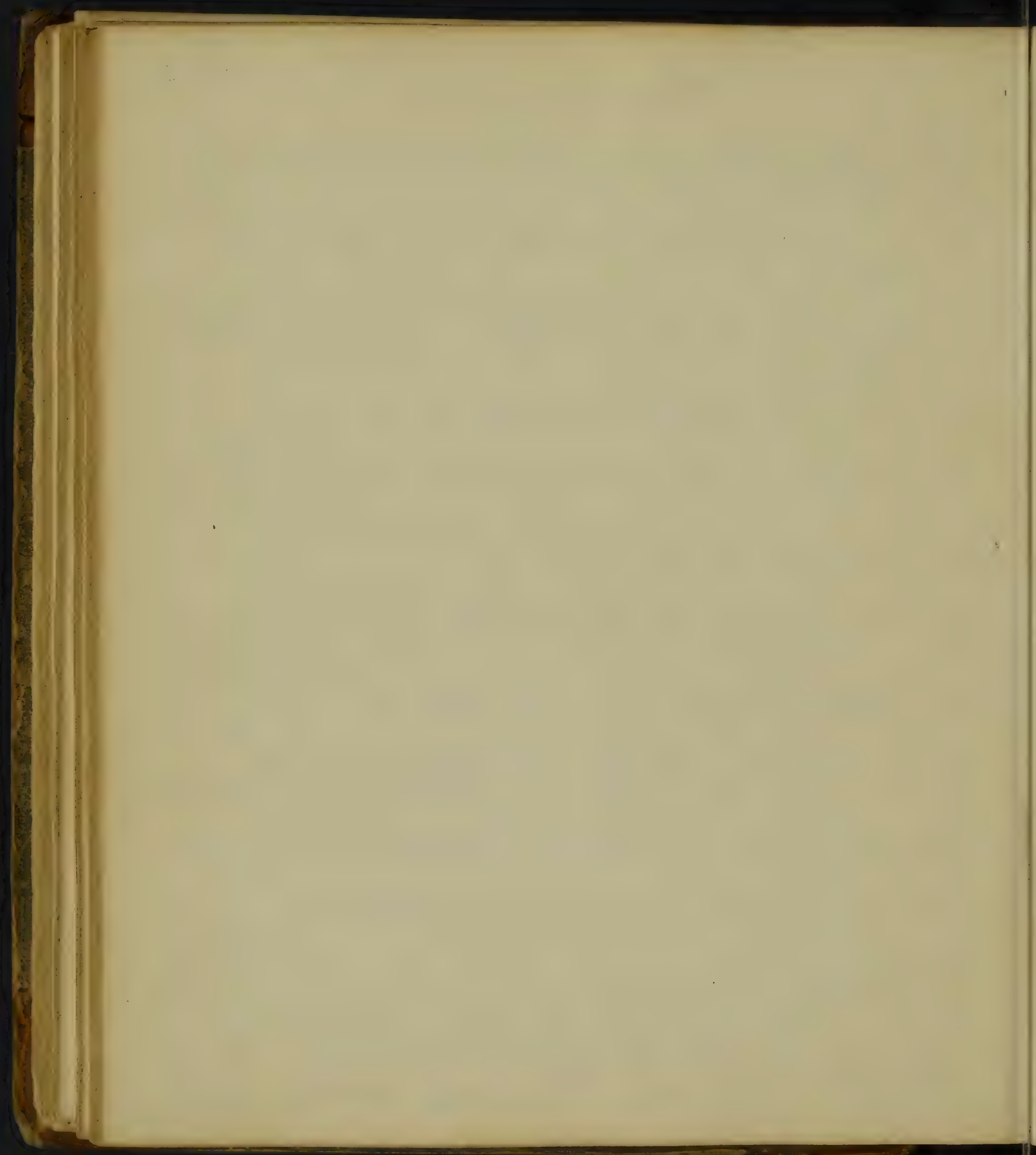
It is the usual time in Europe in the spring
time, but the law does not exactly contain as to time
of birth, &c. &c. the death of a child must be taken
to be legitimate.

According to some opinions, nine solar
months and ten days are the usual time of gestation
allowing 30 days to a month = 270 days &c. &c. &c.
the months of the year about 175 days &c. &c. &c.
to others 40 weeks = 280 days. The days of solar months
are 40 weeks, are the ultimate or farthest limit, but

usually time is not more than 40 weeks, &c. &c. &c.
It is agreed that the usual time may be protracted or
shortened by various causes.

The rule is that a child born within the usual
time of gestation, &c. &c. &c. is legitimate.

The rule is that a child born within the usual
time of gestation, &c. &c. &c. is legitimate.
It is presumed as if born during wedlock.

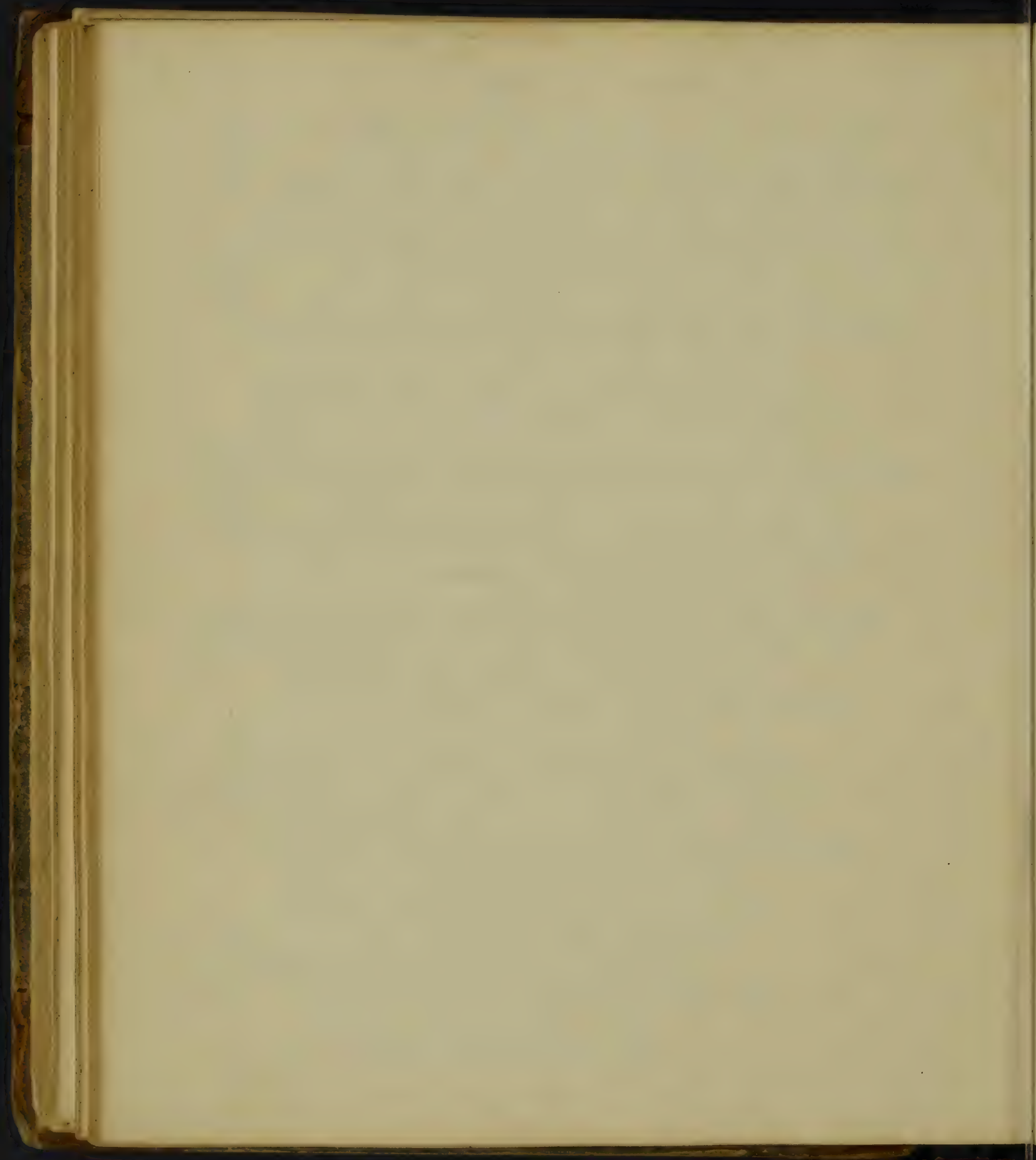


occurs a child born after the expiration of that period is presumed illegitimate. But one born nine months and thirteen days after has been held legitimate, the mother having suffered much in childbirth and having been ill for some time and 30 days after, under the said circumstances.

If a woman marries immediately on the husband's death and a child is born within such a time as that according to the usual course of gestation it might be the child of either husband, he may when of the age of discretion declare either of them as father.

Said that we may not be satisfied in some cases with the wife's declaration. Personal reputation with the law. But the rule holds only as between husband and wife and not in cases between a man and before the introduction of his parents and the father's signature to the marriage. Pertaining to intestacy a valid marriage is a distinct thing and the husband's signature enters upon his father's estate and does not interfere with the exclusion of another's.

But to exclude another there must have been an intention of doing so by the husband's signature and consent.



to his father. I was saying his life must be very quiet and
if his father is not at all in the

1840. 11.
1841. 1.
1842. 11.

of the rights and incapacities of that child.

His rights are such only as he may acquire, for he
is not allowed within, being under various titles

1843. 10.
1844.

His father, that of him to any one except himself

But the maxim that he is entitled to his own

1845. 10.
1846. 10.

but to all purposes of law & marriage within the

1847. 10.
1848. 10.

but to all purposes of law & marriage within the

to prevent the father or mother to a child

1849. 10.
1850. 10.

single. But it seems to apply only to the two of them

1851. 10.
1852. 10.

clauses. And by Justice Parker's decision in 1851

1853. 10.
1854. 10.

that he is not to be considered as a child to be

1855. 10.
1856. 10.

not to inherit. The very expression is one by which

1857. 10.
1858. 10.

in the law to be sure as to it.

1859. 10.
1860. 10.

And he may purchase by his name that of his

1861. 10.
1862. 10.

by the name of J. Pitts.

1863. 10.
1864. 10.

And the name and description of the son of

1865. 10.
1866. 10.

J. Pitts, to having given the relation of being the

1867. 10.
1868. 10.

son of J. Pitts.

1869. 10.
1870. 10.

1871. 10.
1872. 10.

1873. 10.
1874. 10.

1875. 10.
1876. 10.

John is the of a 'natural' child, & the condition of his
 marriage is such that it is not his duty to be married to
 a woman who is 'born to be a wife' the condition.

He can have no heirs except a, his wife, & all other
 other heirs must be named in the will, & the same is
 the case with a woman.

It is a matter of settlement is required in the
 parish in which he is born, & the same is the case with a
 woman of the same. If the child lives with the
 mother, & is born in a parish, the mother must support it.

Exception to the rule, when a woman is a prostitute
 or a woman who is a prostitute, & the mother is a prostitute
 or a woman who is a prostitute, & the mother is a prostitute
 or a woman who is a prostitute, & the mother is a prostitute
 or a woman who is a prostitute, & the mother is a prostitute

to the goes to be a woman who is a prostitute, & the mother is a prostitute
 or a woman who is a prostitute, & the mother is a prostitute
 or a woman who is a prostitute, & the mother is a prostitute

Now for ever the woman that he is settling, & the
 child is born, & the mother is a prostitute, & the mother is a prostitute

Account of the

1841
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1844

1841 The mother felt the want of her

1842 I was one in that sense that a child is not
not content, even his mother in the most perfect
1843 His mother is the great object of

1844
1845
1846

1844 The only of parents to the child is that the
1845 The only of parents to the child is that the
1846 In their obligation to maintain him. As to the more
1847 concerning the only of the child is that the

1848

1848 The only of the child is that the

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1849 The only of the child is that the

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1851
1852

1850 The only of the child is that the

The mode of proceeding.

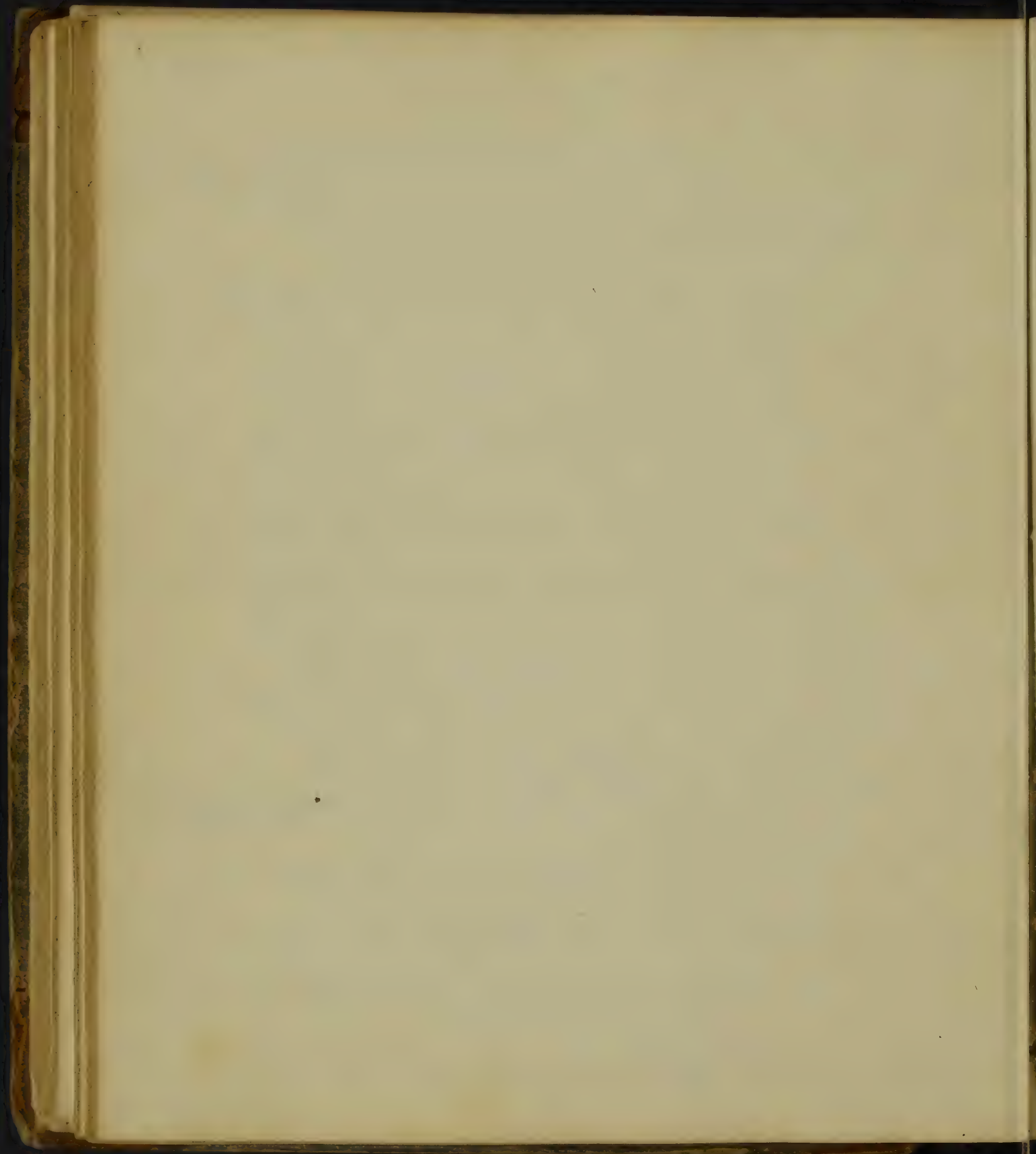
1853

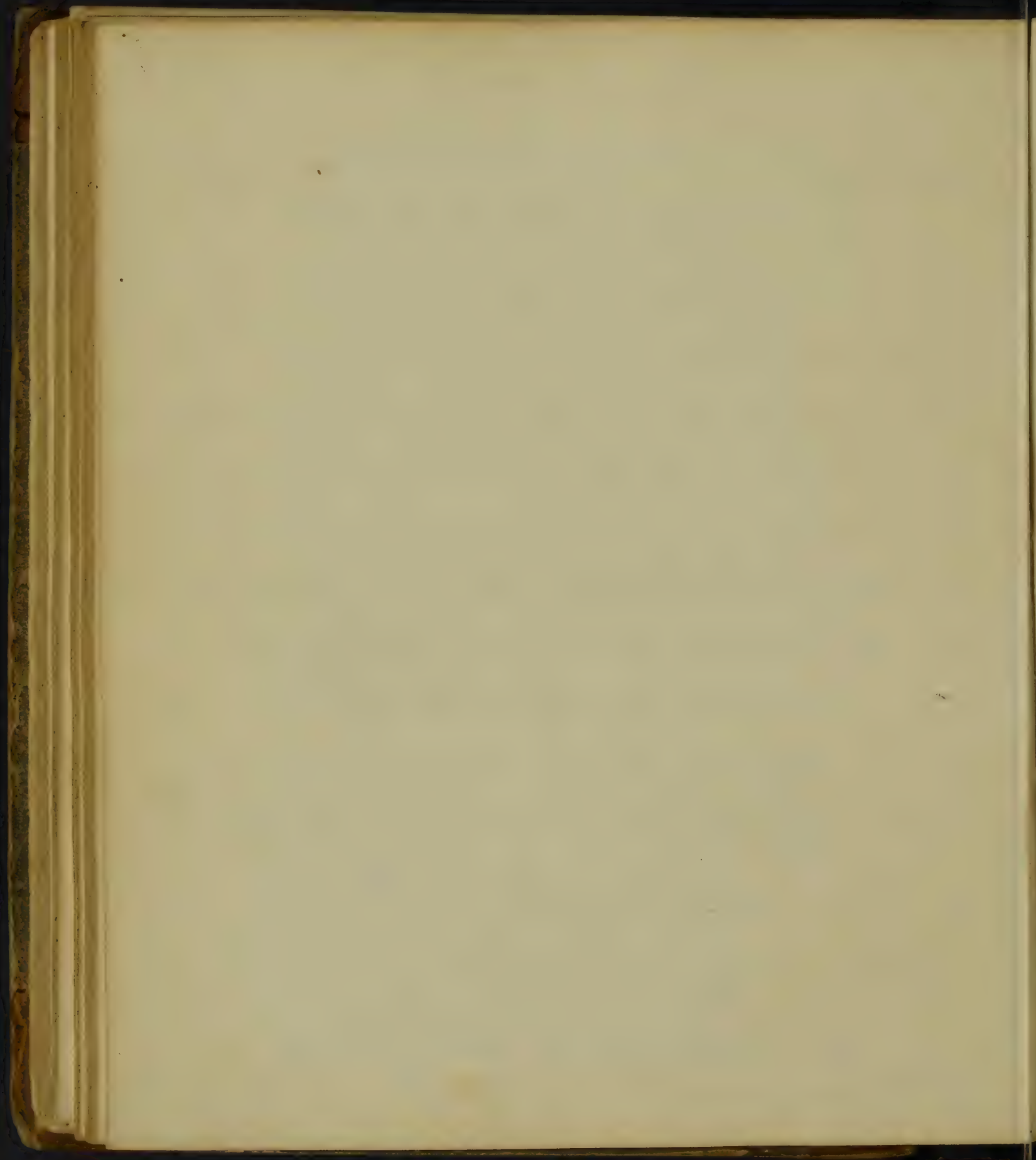
1853 The only of the child is that the

and in his direction may find over the pass we used, to
 the next winter coast to coast, the only one having
 that jurisdiction of the cause. The angle is the same
 which the transition appears wholly unaccounted for in this
 inquiry as on the first trial the father is shown to
 have been in a state of mind. The ground is the same
 and the same with the former. The present is similar,
 the spirit is the same. The father is generally supposed that
 the mother must be made to feel the fault of the child, ^{and} ^{that}
 so that the mother has no remedy. The father is the only
 one who can.

The father is not contented, but it is for him
 to see with a view of seeing the cause for the father of fault
 in the child. The father is not to be made to feel the fault of
 the child, but he may contradict or contradict it by
 his own sense as it often does.

Now the mother is not to be made to feel the fault of the child. ^{Part 11}
 is the time of her trial and a serious contest in the ^{11th} ^{12th}
 transition. This transition she for a time disposes with, and
 is finally made by the father's sense in 11th and 12th
 and finally. The father's sense of this requisite is more





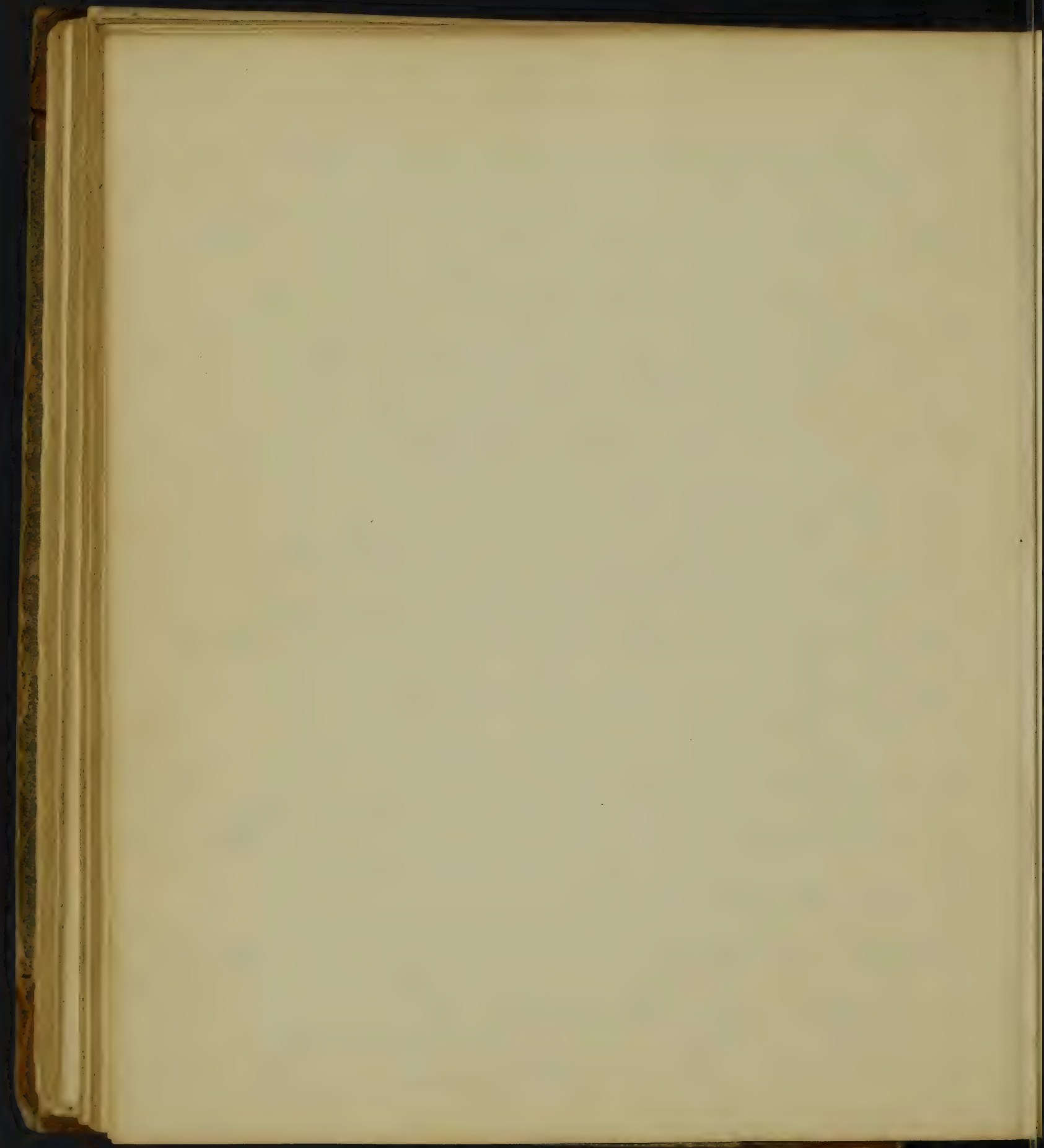
The child seems a continuance of an infant of his kind.

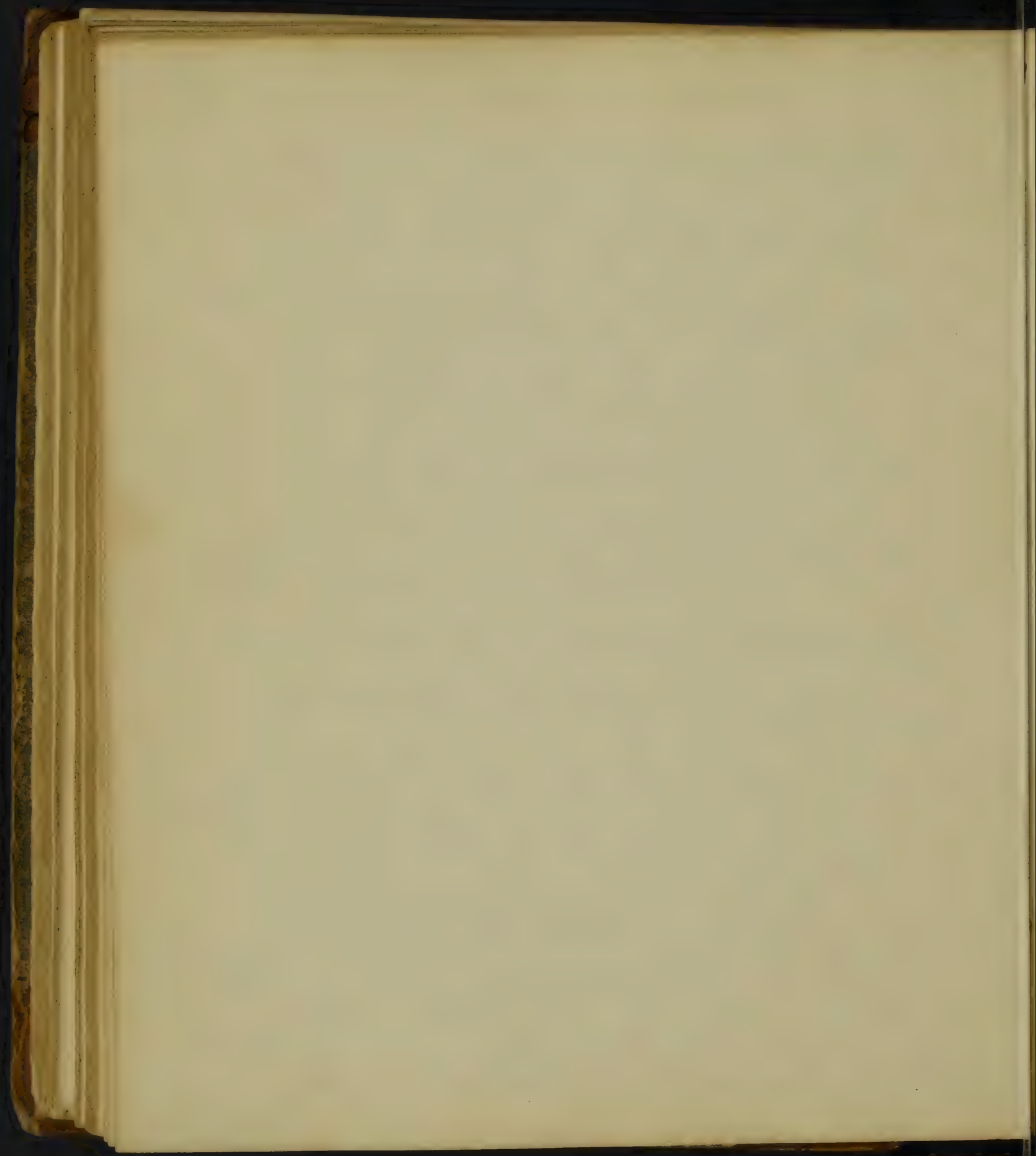
If the child were a female, before delivery, - 34. 10. 9.
 follows an abortion. The child is discharged. The mother
 was before, every bad husband and mother in the
 transaction. In the morning after the birth. The
 child is a good natured baby. The mother is in-
 vincible. The child is in the hands of the mother. 34. 10. 9.
 no reason for it. 34. 10. 9.

In this case the child is not discharged. The
 child is a good natured baby. The mother is in-
 vincible. The child is in the hands of the mother. 34. 10. 9.

If the mother does not discharge, the child is in the
 hands of the mother. The child is a good natured baby.
 The mother is in the hands of the mother. 34. 10. 9.

If the mother does not discharge, the child is in the
 hands of the mother. The child is a good natured baby.
 The mother is in the hands of the mother. 34. 10. 9.





decision of the family court, that the mother was not com-
pelled to her own discretion to answer questions rela-
tive to her intimacy with other men. Aug. 1857

Her other discretion was rightly left by the court
only it is left to the father but it is not that it may be
to any other man.

Discretion can be admitted as evidence, but they are
discretionary in cases purely discretionary. Sept. 1857

But the rule is to withhold discretionary powers with
reference to the right of appeal, also appeal from the
court of the first court in criminal cases. To enforce with
in this statute. This was the old rule, & those appeals
were allowed, and not allowed.

The rights and duties of Parent in relation to
their legitimate children and vice versa.

1. The duties of parents to their children consist prin-
cipally in their protection, education, and maintenance.

1. The duty of maintenance is founded in natural law - 18467
but there is no legal title right to receive it, 2, 95 00
it is as they are able. Maintenance consists in
providing necessities. This duty is reciprocal. 18467
18467

The obligation on towns here, and parishes in Eng^d to support paupers is only pecuniary. Relations are little in the first instance.

Grandparents not liable if the pauper has parents who are able to support him.

So grand children not liable if children are able.

Suppose the parents able to afford only a partial support, are not grand parents bound to contribute? So of children and grand children?

If a man marries a second time, and his wife is a former marriage, is he bound to support them.

My mother was married a second time, having infancy, whether she was liable or not, as it has been held to be, is immaterial as an issue to these questions. See

but his obligation ceases with the mother. In Eng^d a man is not bound to support his wife who is only a former marriage now having cohabitation.

The question made as to the wife's liability, at the time of the marriage. "Not his, extending only to

the cohabitation" In a former case, "Is a wife's obligation?"

2. 28. 3. 1844
4. 28. 3. 1844
"1845"
2. 28. 3. 1846
"1845"
9. 28.

Reg. 156. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35.

Parent and Child.

1844 But this is not the true point, that the husband
is bound to bring up a family, if the wife is as he takes
her in marriage. otherwise not.

1845 1846 Surely a man is not bound either to be a father
or to support his wife's parents. Policy requires.

1847 1848 But ought not he to be bound to be the father of the sons
he has?

1849 1850 But he is not bound to support his sons after
they are grown up.

1851 1852 Suppose a man has parents and children able
to support him. He has no more parents or children
than I.

1853 1854 But his duty to support his own does not result
any more to discharge it his children by will or otherwise
give him more.

1855 1856 If a man dies without issue leaving
a wife who is unable to support herself and who
has no relatives to support her, what happens to his
estate in the hands of his executors is charged
with the support during widowhood.

1857 1858 But more of enlarging this duty in law. It is

1st In law the obligation is not one of obligation, in the sense of a contract, but the fact that in the equity jurisdiction the parties have.

W. & A. 785

Action of law law as a principle will not lie.

W. & A. 786

2nd Whether the action is in law or equity is in connection with the fact that the parties have.

W. & A. 787

But application may be made in any one of the relations of the parties, and the effect of the law may not be to make the parties a party and a party.

W. & A. 788

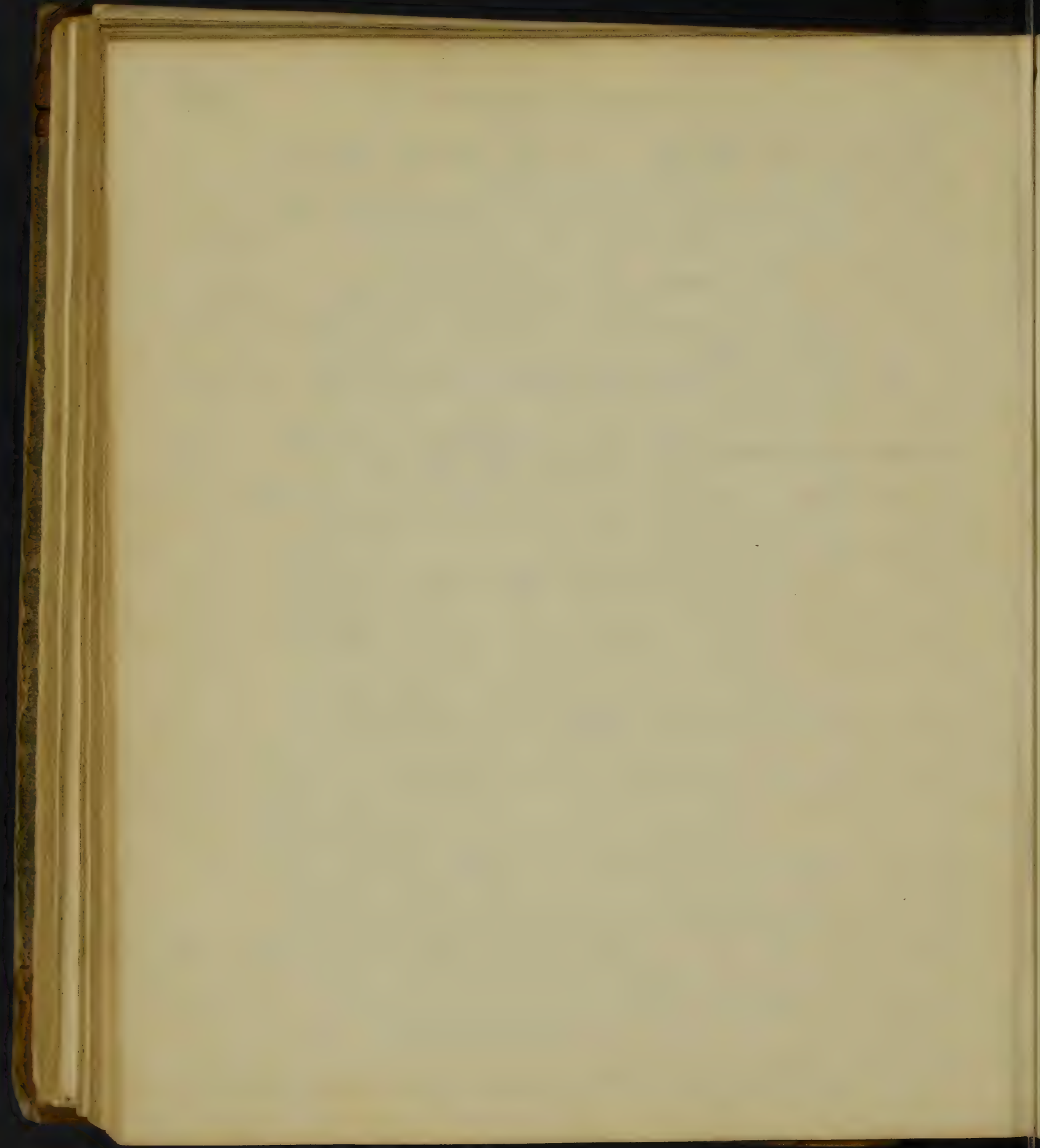
In this memorial all the parties are united, and the court is before the court, and the expense of maintenance is a happiness according to the relation of the parties to the court, and the court is a party to the parties.

Relations when a person is required to give security to abide the law, but the court is a party to the parties, and the court is a party to the parties, and the court is a party to the parties.

W. & A. 789

3rd The duty of the parties is to abide the law, but is rather permitted than enforced by the court.

W. & A. 790



The parent may maintain and uphold a child in
law suits, without incurring the guilt of maintaining
murders. To be every justly a battery in defence of
his child is to every use the same violence against the
child himself might.

180. 451
2nd 564

181 1150

182 131

183 145

184 150

Case of man Houghton. To counter a child may
maintain and uphold his parent in his own way, justly
a battery in his defence.

30 151

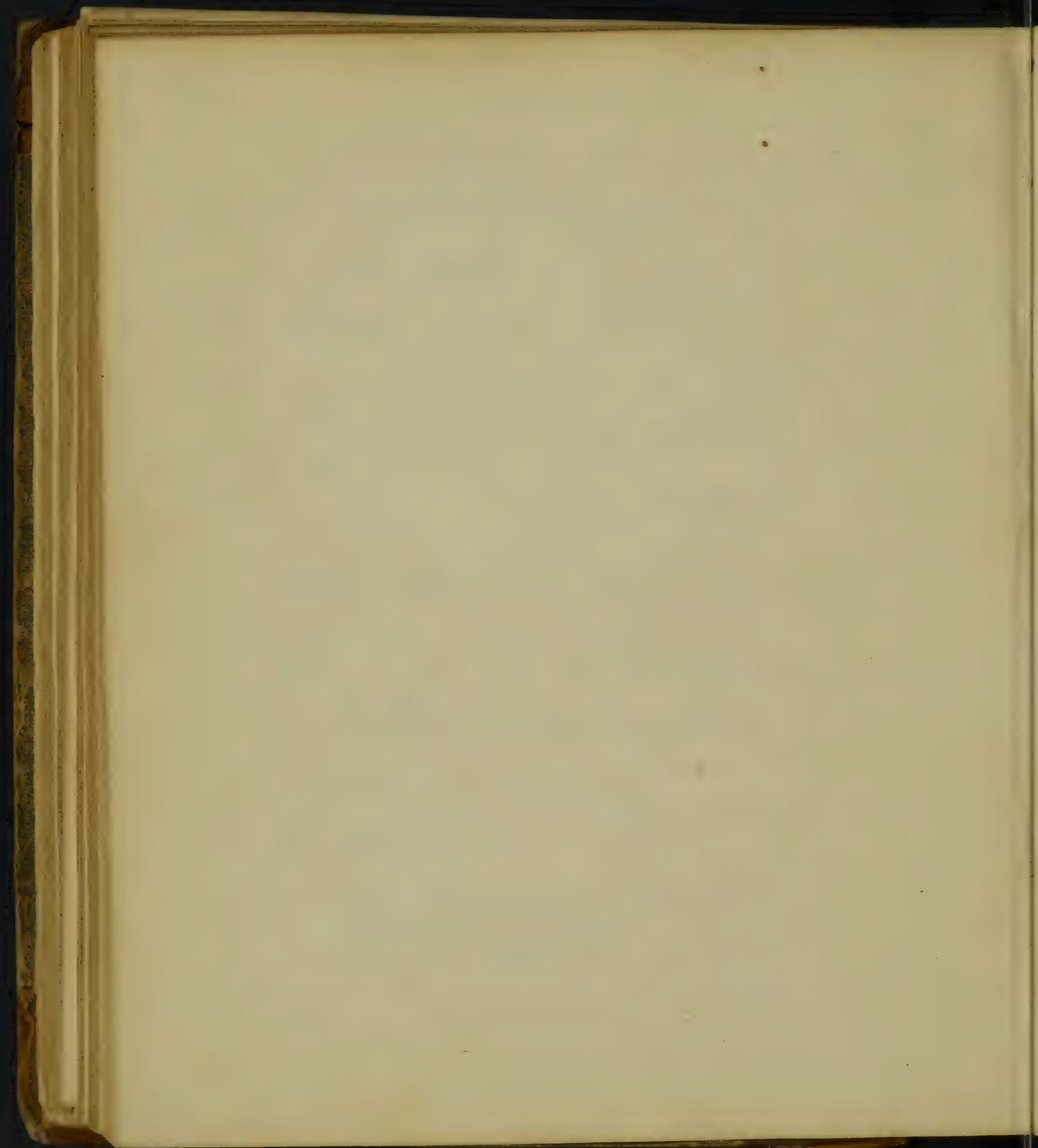
3. Parents are bound to give their children suitable
education. 185 151

The provision in Eng^d to enforce this duty, would be
more strict than in the laws of other countries, by the same
was more just, and that parents are to be liable in
penalty to the poor child, as well as to be educated in the
which religion.

186 151
187 151

In England all parents and masters are
required to teach children under their care and educa-
tion to their ability to read the Eng^d tongue with
to know the laws of capital offences, and it is also to be
it, to teach them some part of the Christian religion.

188 151



Parent to be neglected for 99.

Child may be authorized to take action from
Parents neglecting their education so that they become
idle, dishonest, and unworthy to place their names
on time them to teachers that they may be suitably
instructed, employed, and governed. Webster 21, female.

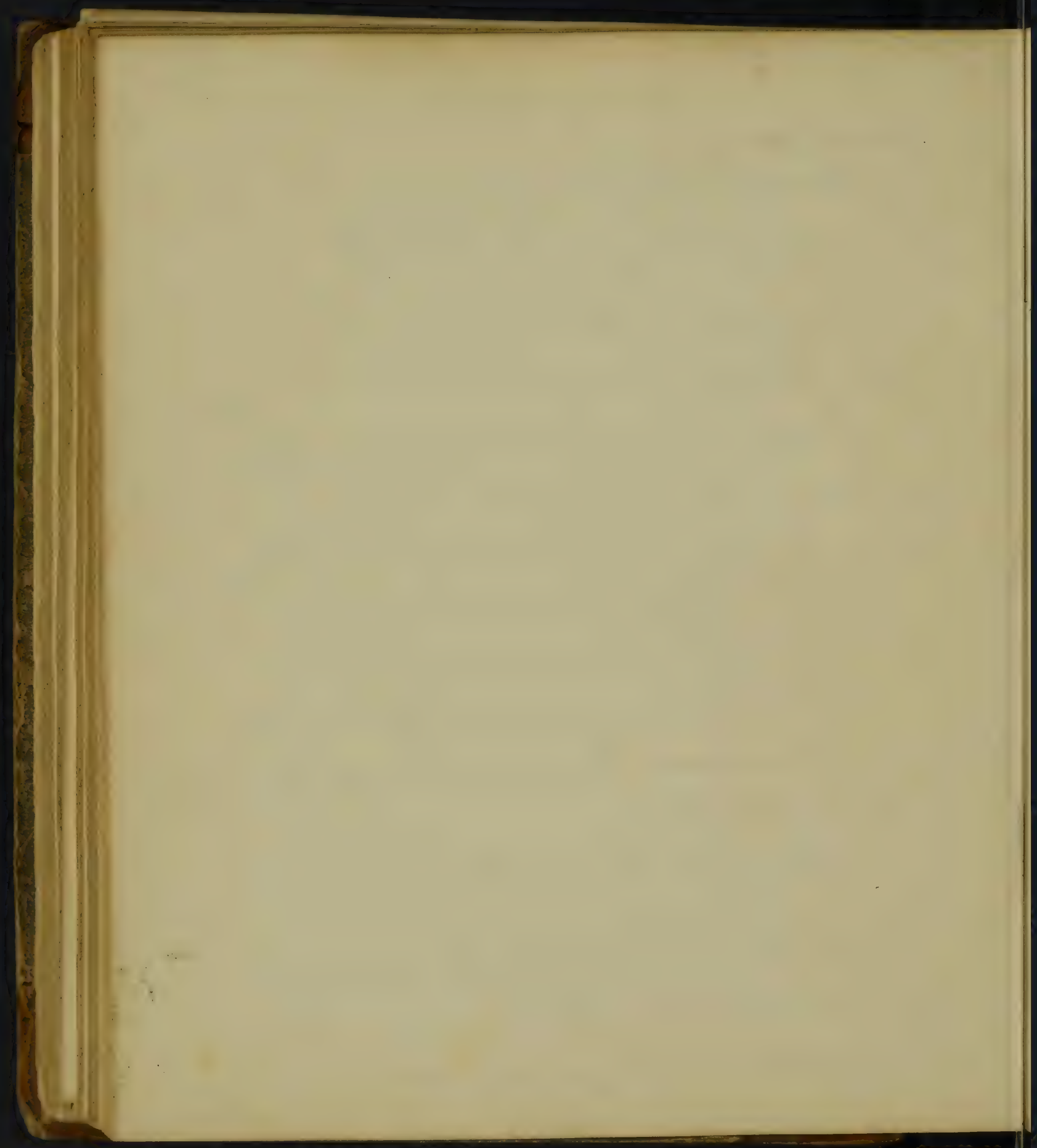
18. The duties of children to Parents consist in their
obligation to obey, and to submit to them, during
infancy - to support them in adult life, and
to protect them in need when it is necessary. Webster 60

2. As to the rights and powers of Parents.

1. The Parent has a right to correct his minor child
in a reasonable manner. This right is to be found in
the Parents duty. 1864 132

By the Roman law the father had a *patria potestas*,
a power over his child's life. 1864 136

But if the Parent exceeds the bounds of moderation
and reason, and is influenced by passion, the
child may have an action against him by his guardian.



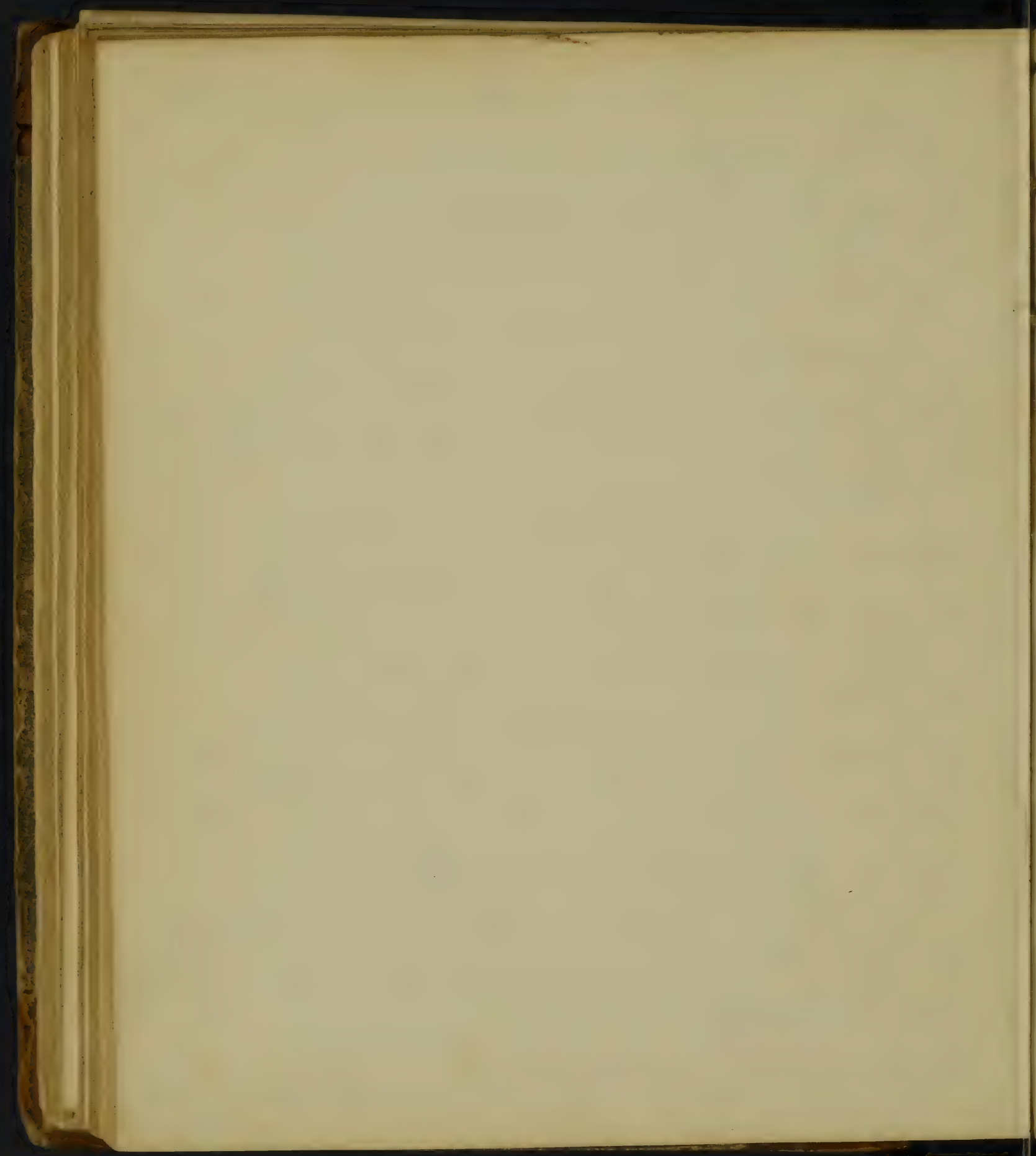
But the authority being in a great measure discretionary, he is not liable for slightly exceeding the limit prescribed in the rule, nor for a more error in judgment as to the proper degree of correction.

It seems that there must be some reasonable correction and notice to justify the parent. ^{17th Inst. 72.4} ^{18th Inst. 65}
vide Little's Humicide.

This power of correction may be delegated by the father to a master or schoolmaster, the latter is then as to his duties in the parent's service. ^{18th Inst. 65}

2. The consent of the parent to the marriage of his child under age, is also required by the law. ^{18th Inst. 65}
(See note on page 170.) The husband and wife, without such consent the marriage is void, in law. By our law even after the marriage is made but the clergyman or magistrate is punishable by fine. ^{18th Inst. 66}

3. A father has no power over his infant child's estate, otherwise than as trustee or guardian, he is liable to account when the child attains full age,



or as the case may be before.

180442.3

A minor is entitled to all the property he acquires otherwise than by force - i.e. by gift, grant &c.

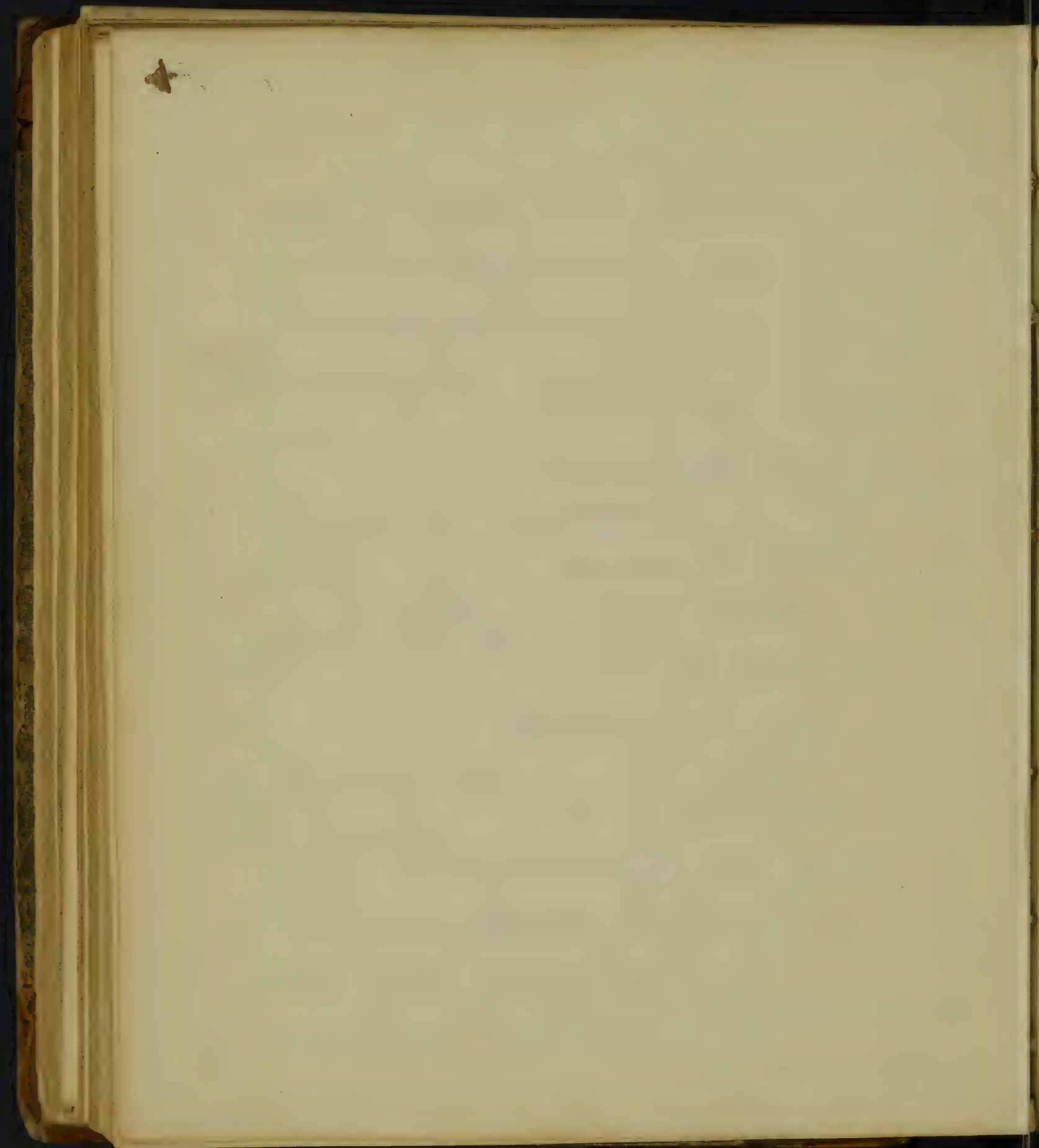
4. The father is entitled to whatever his infant child acquires by force, for he is parent to his child. 180445.3
And a gift to a child of his earnings must not be good, if it would defraud creditors. 180446.3

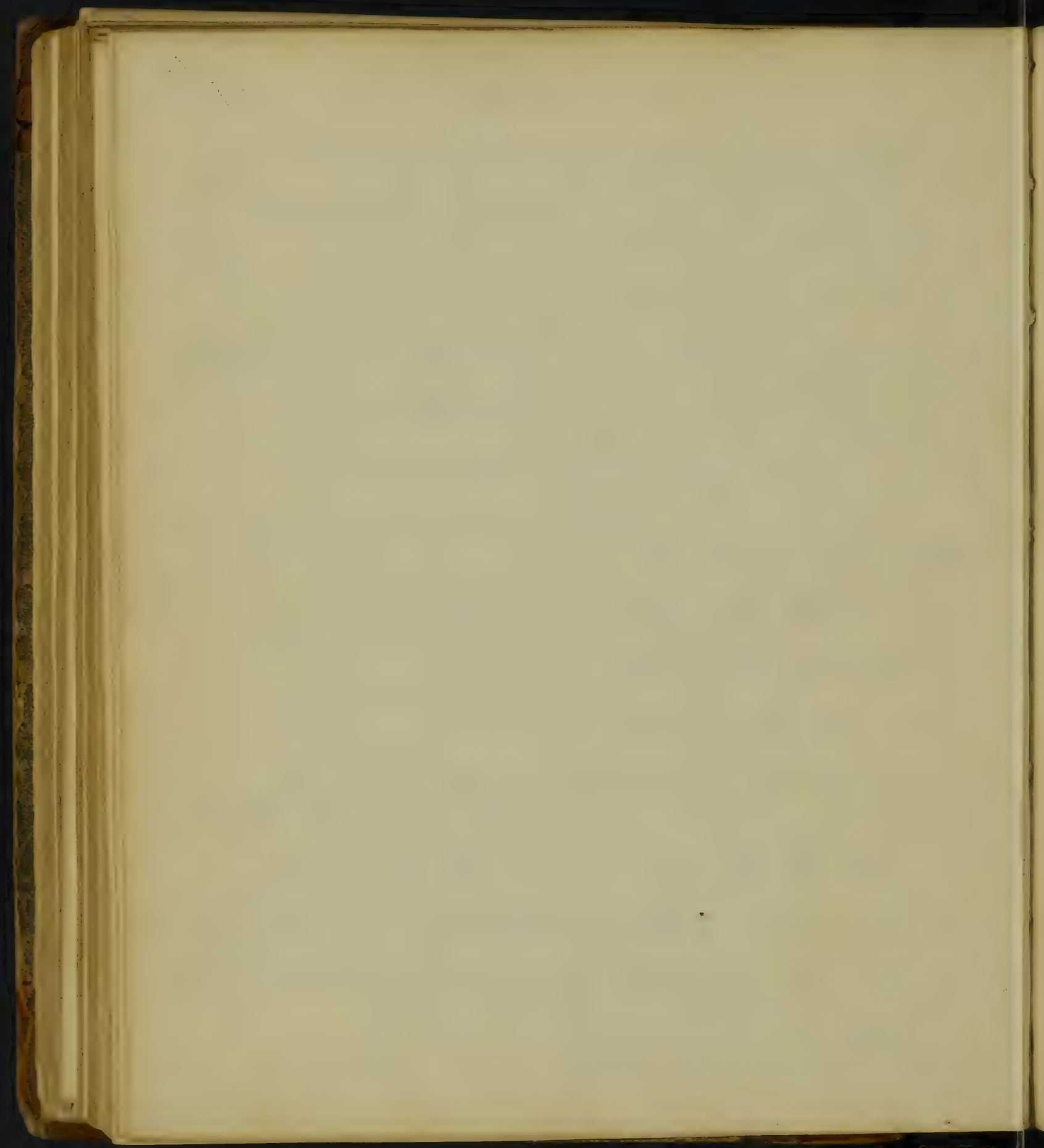
Hence the parent is entitled to an action for damages against any one who has beaten or otherwise injured his infant child, or on the occasion a loss of his service, as in the case of a servant. 180445.5
180446.11
180447.10

5. In enticing away one's child.

180448.30

Now if an infant has been beaten or injured, he is entitled to the damages for the immediate loss - i.e. for the actual injury. 180449.55
And if the parent has incurred any actual expense in consequence of the injury done to his child, as in the case of the servant, he may recover that also in his action for damages of specially laid as a ground of damages. 180450.4
180451.8





nothing less - not a penny but the damages must
be in any measure proportioned to the help of justice. 2nd 14

2 It is the child in a pecuniary view, is a
burden to the parent and of no profit. (C. Johnson vs
daughter. 2nd 50

3. The character of the daughter determines in a
great measure ^{the quantity} of damages, and evidence of her in-
tercourse with the men goes in mitigation of damages. 2nd 474

4. In several actions of this kind have failed
notwithstanding loss of voice where there was no seduction
even case of a prostitute. In one case the father was
permitted the right (he being a married man) to visit his
daughter in case of adultery. 2nd 131
2nd 37
2nd 17

But still it has been held both in the older, and 1st 113
modern cases that the action does not lie unless the 2nd 157
daughter is injured, and it has been held that 2nd 155
the parent is not to be taken into consideration 1st 117
in the action. 2nd 157

But again has lately been held that the parent 1st 117
is to be taken into consideration in the action 2nd 155
if the father is in his family. Then seems a

Parent and Child.

Parent, Suppose so. If she is of full age?

Age of daughter not material if the action is
against a parent; no want of service necessary.

But if no one else she is a parent of course. From
this it follows she serves another without wages, as is
usual, from herself.

See the 6th case. That the daughter went to reside
in the father's house at the time of the injury
true. After return, 1878. Is it all cases? Suppose her ac-
sion at a boarding school, or having another family, for
the benefit of the parents. If so, would this may perhaps
be enough. To whom she would not otherwise be a parent
because the case was 1879. Said by 1878, to have
been before by 1878, held 1878 that the child
must be a minor. Her age not held so.

Parent, is for me standing in loco parentis, as an
agent. Is it a master.

There is no other the daughter herself is a good mistress,
and not interested in the result.

Is it a master. Is it a master. Is it a master.

106

106

106

106

106

Present and Third.

kindly attention to the case.

Det in King. The action is in form treppapp vi et armis.

3. 11. 27
11. 11. 27
11. 11. 27

Parent and Child.

with his children.

11. 11. 27

11. 11. 27

The father of the father is the child of
the mother of the father. The mother of
the father is the father of the mother. The
father of the mother is the mother of the father.
The mother of the mother is the father of the mother.
The father of the father is the mother of the father.

The father of the father is the mother of the father.
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2. The father of the father is the mother of the father.
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The father of the father is the mother of the father.
The mother of the mother is the father of the mother.

11. 11. 27

The father of the father is the mother of the father.
The mother of the mother is the father of the mother.

And was a contract, the contract between the parent and child. See also 295.
 176. The "master and servant." 80

Guardian and Ward.

There are different kinds of guardians. Their rights and duties.

A guardian is a temporary legal representative of a person in loco parentis during the child's minority or child, when a guardian is called a Ward.

In Roman law the paterfamilias had the charge of both the person and estate of the ward in both capacities. The care of some guardians, but the power may be under the care of one guardian and the estate under that of another. Distinct persons officiate under the Roman law. Tutor, Guardian of the person and curator of the estate.

Jura in the West

1. of the kind of Jurisdiction at common law, and then we find.

Jurisdiction is being this is the only one which is to be held by knight service, which is in fact the parent - continued over males till full age - as females till 16 - in marriage. Extended to the female and lands within the jurisdiction, signifying Jurisdiction not exercisable for the knights - Assignable - not divided in fee simple at the extinction - hence known to us as Law.

2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

2. Jurisdiction by nature. Some books mention this kind of Jurisdiction as if it was confined to the father - but it extends to parents.

3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

But the father, mother, or any other ancestor may be guardian by nature at common law. The father claims against all others. The mother is the female ascendant among more distant ancestors, if we have an equal claim (as if the infant is heir apparent to his paternal and maternal grandfather) priority in the preference is determined by seniority seems to decide the preference.

3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

His will extends to the female only, not to the male.

guardian law. Ward.

177

1883 Nov. 12.

and continues till the child is 14.

It extends only to the heir at law of the deceased
 or not to other children. Does guard whether in Eng^d or not. 16.32.
 a daughter can be the subject of it being assumed. 16.34.
 16.35-36.
 16.37-38.
 16.39-40.
 16.41-42.
 16.43-44.
 16.45-46.
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 16.91-92.
 16.93-94.
 16.95-96.
 16.97-98.
 16.99-100.

In Eng^d the father may supersede the claims of all other
 ancestors by appointing a testamentary guardian. 16.99.
 16.100.
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 16.120.

When the father was natural guardian, the person
 of the child belongs to him in exclusion of the right
 of the mother in primary. Does when any other person
 is appointed as guardian. 16.121.
 16.122.
 16.123.
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In Eng^d indeed parents are styled natural guardians
 of their children. By this is meant not that they
 are natural guardians at common law, but such as the law of
 nature designates as proper guardians. It is where there
 is none provided by positive law the parent is his guardian
 after the guardian ship of the father ends at his death.
 16.141.
 16.142.
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 16.160.

3. Guardian in socage - This denotes being

Question resolved.

1830 11th 2
1831 11th 2
1832 11th 2
1833 11th 2

the fact is that a person may not later have only
those in infant under the action of law, derived by
parent and so on, in some cases.

whereas to be ignorant of the rights derived to
some extent cannot be said to be derived. But there may
be no constitution in a sense of trust.

1834 11th 2
1835 11th 2

many of insects in distribution between the whole
of the blood. It has a more kindred and in great
degree vicinity of popular devices, except that many
brother and sister, of the half blood, appear the oldest
is preferred, and among great numbers.

1836 11th 2
1837 11th 2
1838 11th 2
1839 11th 2
1840 11th 2

may leave the ward's estate till he is fit and maintain
himself in his own name.

1841 11th 2
1842 11th 2

It extends to the person, so long as he is fit
and in custody, and seems to be a part of the
custody of person and after it that of every species
of property.

1843 11th 2
1844 11th 2
1845 11th 2
1846 11th 2
1847 11th 2
1848 11th 2
1849 11th 2
1850 11th 2

Trust not a sign like that in philosophy, in infant
and so on.

1851 11th 2

It is the same way with the government of
property, the same as in the case of the profits

provision not made...

admiral
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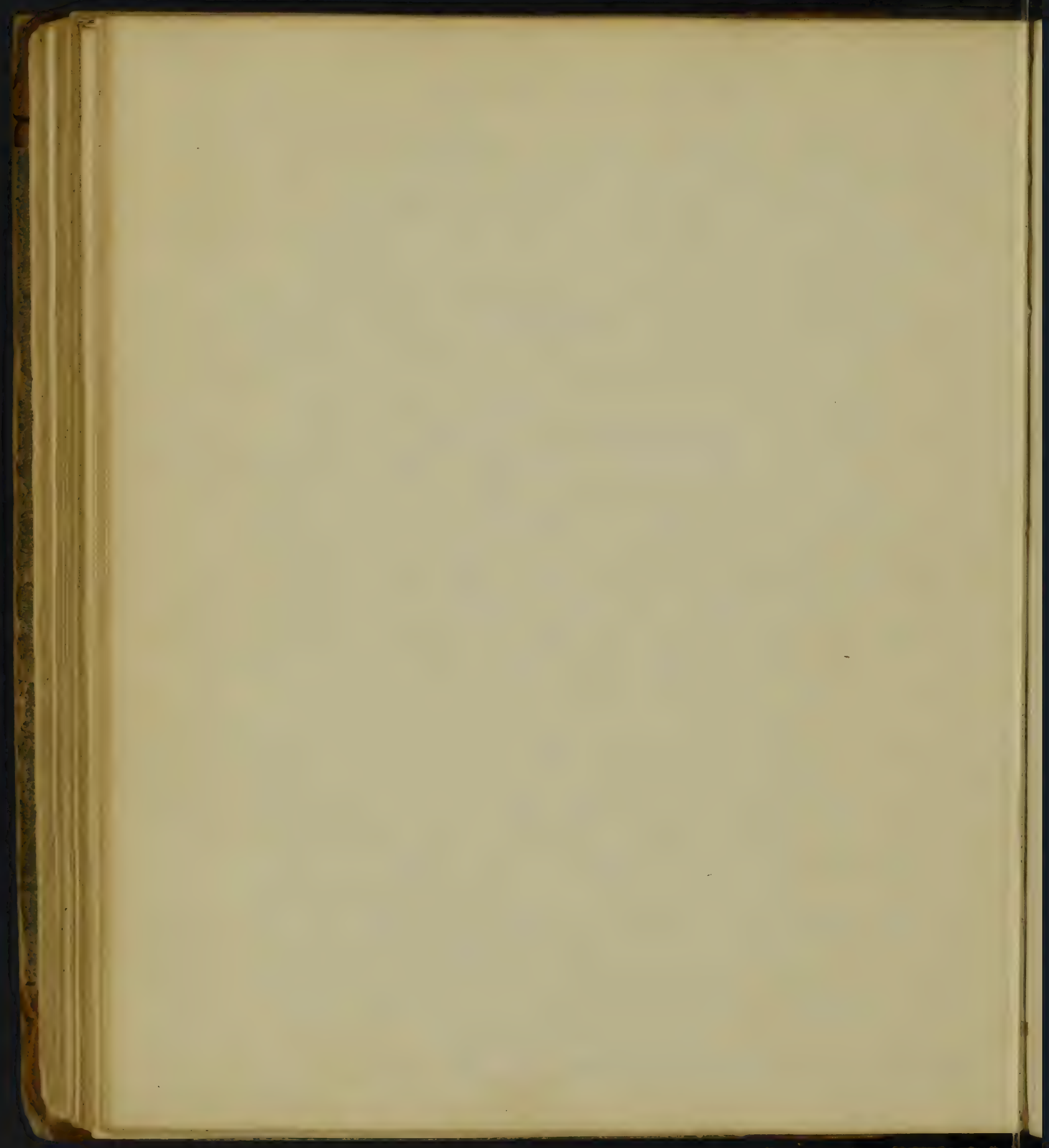
...in marriage... it is to be...
...by the... of...
...of testamentary...
...

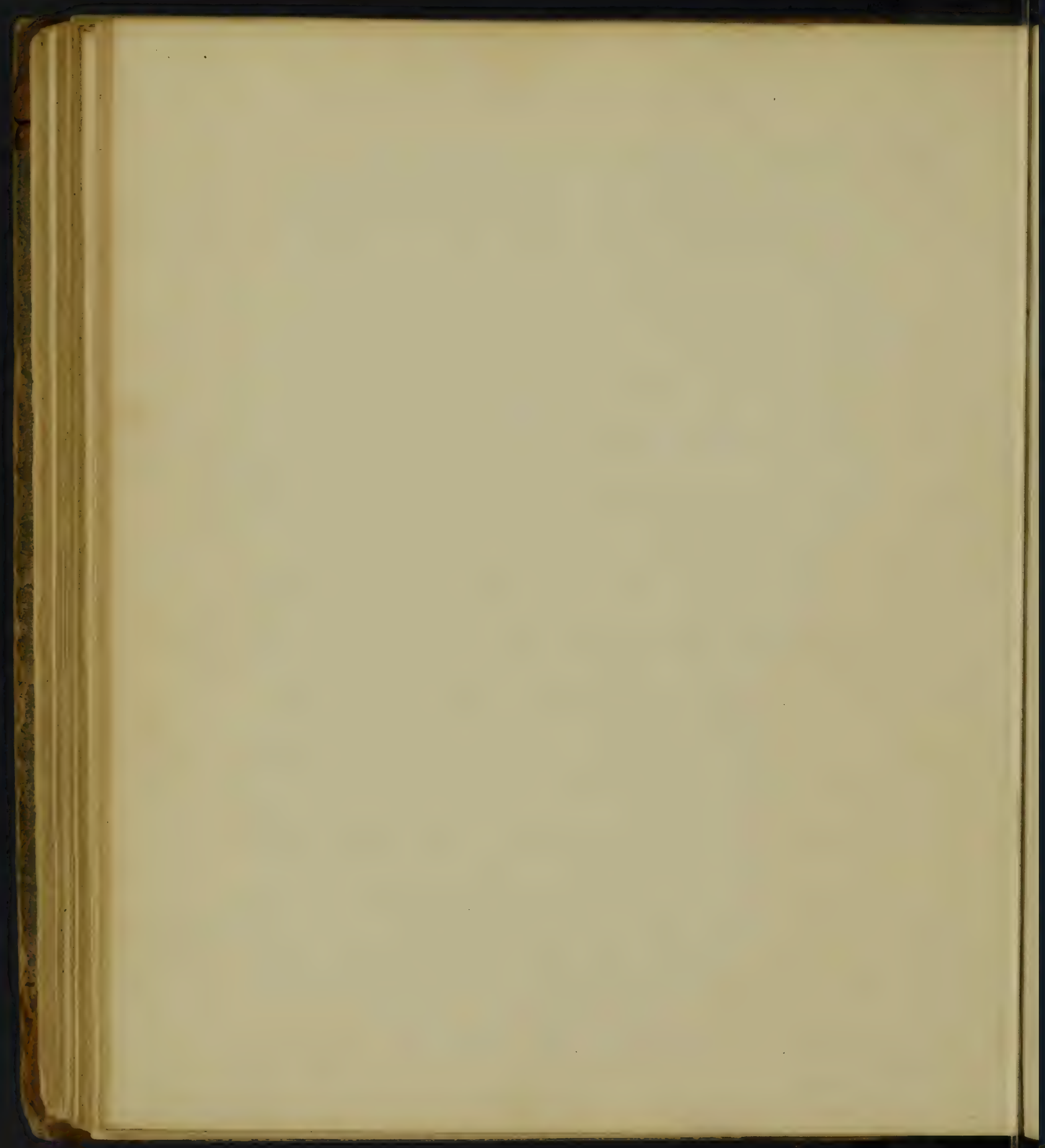
4. Guardian to children. Take place... by a...
...the guardian... to children who are
...not... but to their... and
...at the discretion of the father or mother.
...it ever take place as to their...? but not
...if there be a parent he or she is natural guardian
...this can be... If no father or mother the ordinary
...to take care of the... and
...and to provide for the infant...
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...being no guardian in...
...guardian to the younger children? are ap-
...by the... or chosen by the infant? I suppose.
...can have a guardian to... in...
...by the... a father whether...
...with 7 witnesses...
...for any or all his children, whether...
...even to infants in...
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we permitted, found, residing in England, is latterly
 more to name his successor by deed. Last election year. 1884

By the charter is said to be in England. 1884 463

But it is also said that the same may be either before
 here after. Indeed it is said that before the election
 (1884) the practice of choosing guardians was almost
 confined to infants under 14. The same law governing
 guardians after that age is a great measure except in
 some cases. Lamb. Dec. 1884. 1884

2. Guardians appointed by the Lord Chancellor. This
 is also in it modern sense. Lamb. But the Lord
 of Chancery has exercised the power of appointing guardians
 without objection since the year 1876. 1884

Chancellor never exercises this power however, where
 the infant is otherwise provided with a proper pro-
 vision. Where he is not thus provided the power of
 appointment is very extensive. Its authority is in a great
 measure discretionary, and extends well to the revo-
 cation as to the appointment of guardians. 1884
1884
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1884

Appointment and Will.

The may remove some testamentary questions.

A char. may appoint a temporary guardian, may withdraw guardian to give priority, and make dis-
cretionary power as to the support of the infant as to the
estate. Char. has no such authority in some states. Most.

2. Questions appraised by the Ecclesiastical court.
The law as to the power of this court to appoint is not
settled. It claims the right of appointing for the
personal estate and the person also, there being no other
right except under the power always denied.

3. As to devise as to the personal estate of infants
it is held that such court can appoint as to the
personal estate. This is a special jurisdiction
exercised for a hardship case, when an infant being
will has no guardian appointed - may be appointed in
any case in which not infant is concerned.

The King may appoint by letters patent,
but this has been long out of use.

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Law is limited for infant Off. That is all I know.

In Eng^l can children having no custom guardian elect one at 16, when guardianship for nurture ceases, leaving the father? or how are they provided at 16?

The father I suppose continues natural guardian of them all according to the intent of the law in equity, and the Court will settle the guardianship when him when necessary.

to 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Now indeed the Stat in 2. has given the guardianship in such cases to the father.

with 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

When the law then is no guardian in childhood, in soage, by testament, by custom, by appointment of Court, or by testamentary trust.

The only guardians known to our law are I suppose those that are called natural guardians & those appointed by Court, and I do not know.

Guardianship for nurture would I think exist here, for the father is natural guardian to all his children, and the mother is as much guardian to all as he is.

father is not dead.

most it are being different matters.

In your description of the father & mother till they
died, and as to as to their property and their
wishes.

100000
The father with the mother who is your son,
but as I may be affected for the most part
during his life, as a matter of course, without any
displacing her. I must, I think, be that there shall
be very much she hath neither father, guardian nor
mother. I see the that, but 127.455. no mention of
mother. But in this case the infant generally
lives with the mother. Would that the mother, the
father being dead, is natural guardian to her female
children till they attain the age of majority.

100000
But why the father & mother guardian cannot be
abolished unless the former is deceased, as this can be
done only by special words, not of course.

100000
The mother then does not seem to be seen to be
it more or at right guardian to her female children.
And between a son they may be, another may be

appointed of course, the sheriff generally the former officer, the father being dead.

If an infant in testament has no father, guardian, or trustee, it is the duty of the court of Probate to appoint one.

If the infant is of age for choosing, the court is to summon him to appear and make his election. But his voice tho' to be regarded does not control the court. A different person may be appointed. Stat. 17

If he neglects to choose, the court appoints according to its discretion. Stat. 177

If a male infant under the age for choosing has no father, Probate may appoint without summoning the infant to appear so far as cannot be done. But this is not usually done; the mother living, unless affection is made. Stat. 178

It of Probate in this State may displace the father for good cause without doing so long? But it often is "and shall be occasion" court may appoint. Stat. 177
Stat. 178
 Paragraph author the court to appoint when the father is dead. Stat. 178
 The word is "and" has a right to live with his guardian, and cannot be removed by the town. In re

juvenile are heard.

Guadalupe and *S. nev.*

Not uncommon in Eng^d, for than⁹ to compel guardian
to account reasonably. 1 Nov. 28,
1846/3

Guardian's Bond 3.5.

at instance of such person as the court of probate shall appoint, to make partition of the land. Holt. 258
2 Ann. 1311

partition in Scotland and it is said may be the same by a good partition in England. Can may be in point for it himself? 1 Mac. 176
2 Mac. 256
2 Mac. 1841

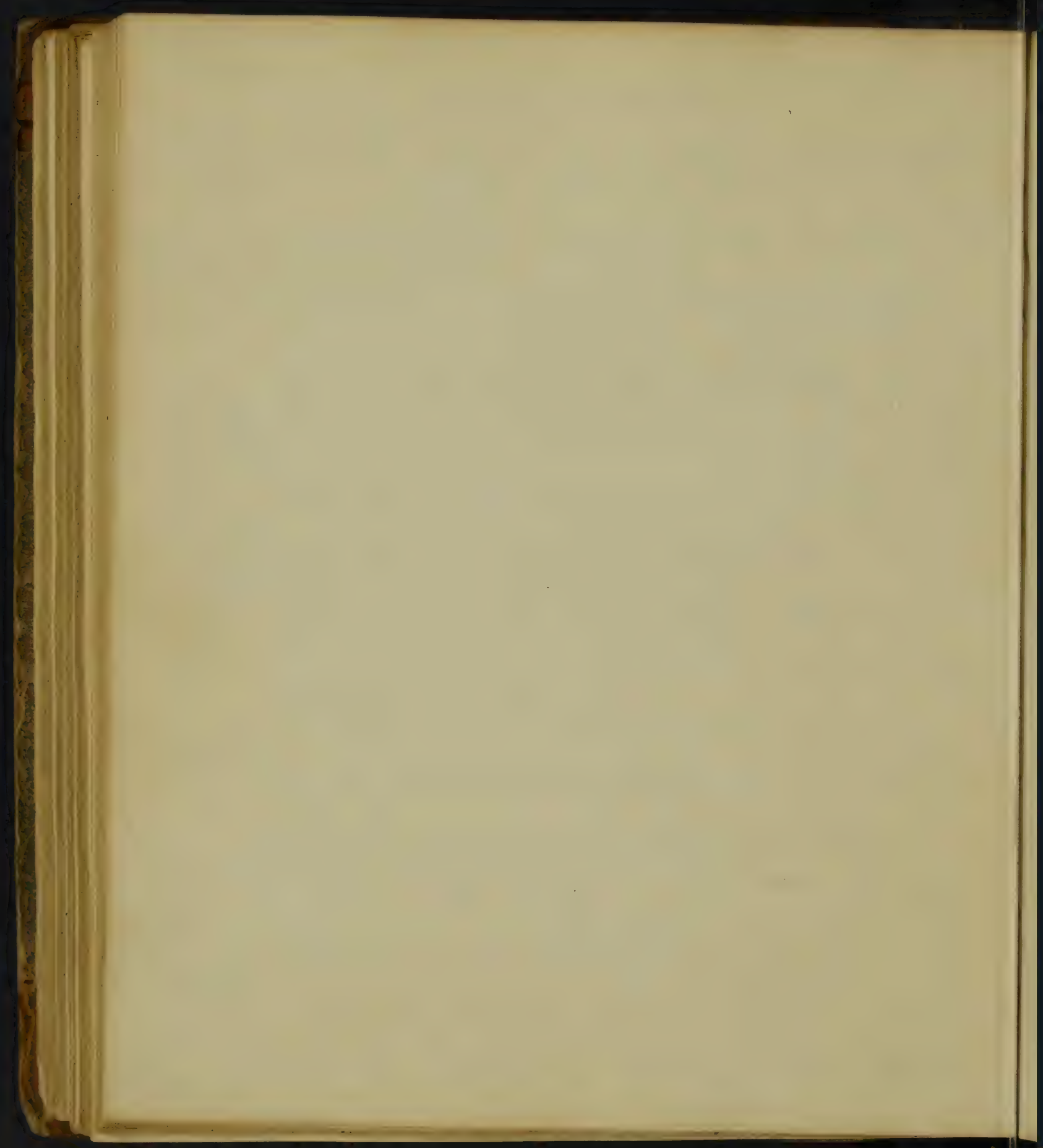
If the words are clear, or a compromise, according to the Guardian. 3 Ann. 538
2 Mac. 257
2 Mac. 1841
If there is any, the words, not the Guardian has the benefit of the discount.

Guardian is considered in charge as trustee for the land, and if a stranger to land enters a interest in land, and takes the property he is compellable in chancery to account as trustee or guardian. 1 Mac. 176
1. Mac. 256
2 Mac. 257
2 Mac. 1841
2 Mac. 257
2 Mac. 257
2 Mac. 257

If a person receives the profits of another land, paying the tithes in money, and for several years afterwards, in State account is charge for the whole whole. 2 Mac. 257
2 Mac. 257

Guardian must allow interest for the land money in his hands, unless he shows that interest could not be obtained for it. 2 Mac. 257

It is the duty of guardian having possession of the land to pay the tithes, charges on the land, and out of that to charge and not with him. 2 Mac. 257
2 Mac. 257
2 Mac. 257

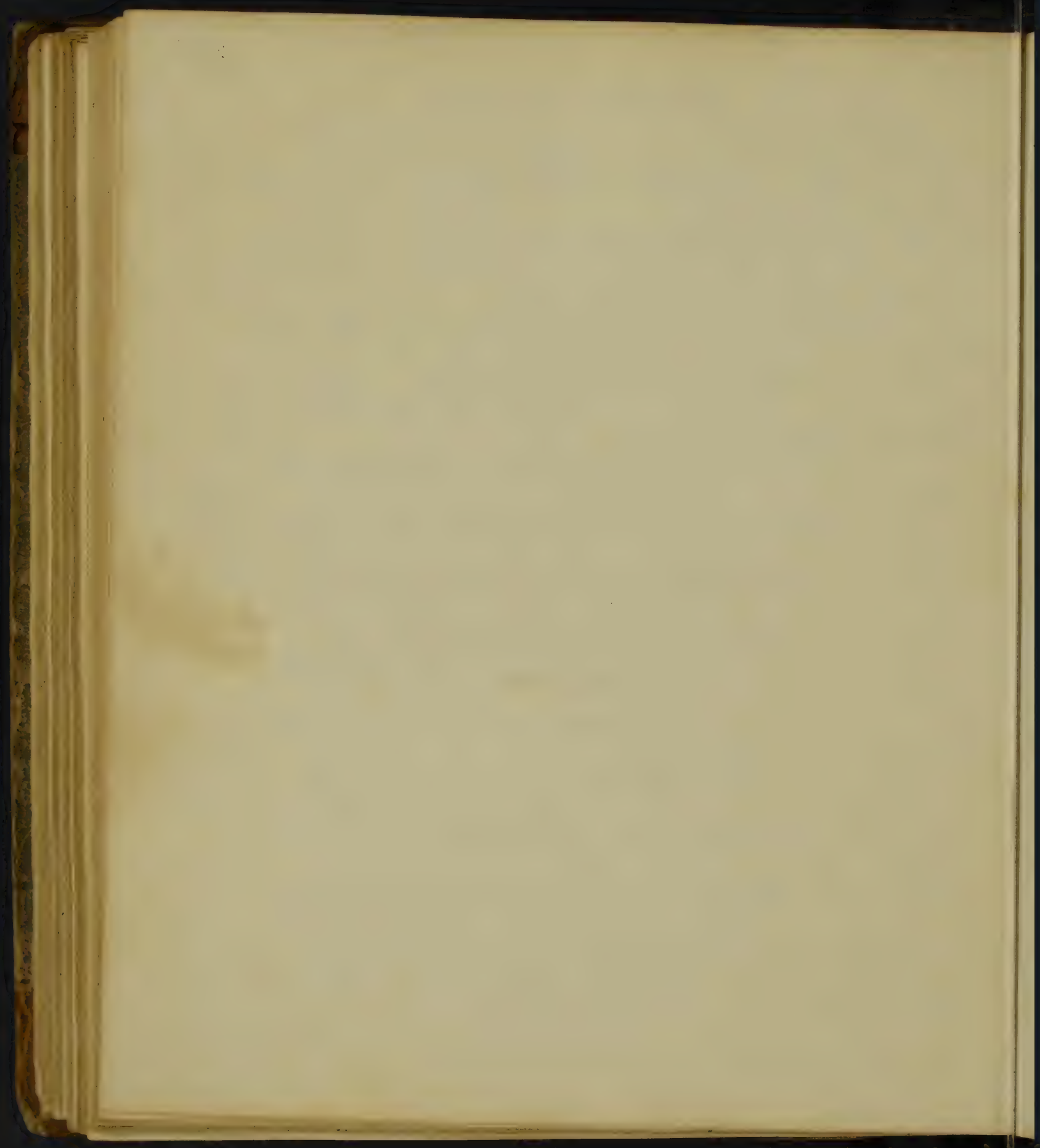


As for the ward's estate in a mortgage, guardian ought
to apply the benefit of the estate to the interest. 1 Ann. 156
2 R. 2. 1799

A guardian has no power to vest a ward's money in land. 1 Ann. 156
But if he does it (taking care it is a good name) the latter
may at full age take either at his election. But if he
takes the money, he is accountable in trust to recover
the land to the guardian. But if he dies without mar- 1 Ann. 156. b
rying his estate, his executors shall have the money. His
heir cannot claim the land. Right of election is her- 1 Ann. 156. c
155
eal. In general, the guardian is accountable for the

ward's money is obliged to pay only principal and in-
terest. But if the money was directed to be appropriated
in a particular way (as in funds) and a guardian has 1 Ann. 156. d
appropriated it in ^{another} different way, as a gift to his
heir, the ward may have at his election the interest on
the funds. 1 Ann. 156. e

As to the marriage of wards the Chancellor in
any exercise of authority never declines by any of our
courts. He forbids marriages without consent of guardian,
and even if guardian does consent he is unequal marriage.



at discretion, and punishes as for intestacy those who
 shirk in the marriage after the prohibition.

146.55
 12.11.62
 100.100

So if there is only an apprehension of the ward's
 being married to his disparagement, the with Guardians
 consent, the Chancellor will prohibit it and secure the
 loss of the ward of his property, and even enjoin the
 Guardian of the other party not to permit it.

12.11.62
 146.55
 100.100

Is this authority ever exercised when either of the par-
 ents is Guardian?

According to usage in Court Guardians
 may bind wards as apprentices. Guardian High Ct.
 females said to be submitted by marriage not so
 of males.

146.55
 12.11.62

Of the settlement of infants.

Our law respecting the acquisition of original set-
 tlements by infants in their own right is simple.

146.55
 12.11.62

1. Under our Stat. no person not an inhabitant of this
 or of any of the U. States can give a settlement in
 any town in this State unless admitted by vote of

1849
- 170
1849-269
6mo 87

For he is not bound to support them the father & mother
they go with her for maintenance.

1849-269

He cannot acquire a settlement by living
with his father-in-law by testament. He has
a right to live with him.

1849-269
1849-269
1849-269

By the acquisition of a new settlement, the
old one is lost, but in another way.

1849-269

This rule does not hold absolutely. For example, where
the first was gained by the husband's property
which continues, but he acquires a new one by birth,
marriage, derivation from parents &c

1849-269
1849-269
1849-269

For infant may, under some circumstances, gain
a settlement of his own by immorality and then his
derivative settlement is lost. E.g. an infant apprentice
in law.

1849-269

He gaining a settlement loses an immediate
one. He no longer is subject of his father.

1849-269

He cannot as apprentice does not gain
settlement by living with his mother.

After a child is emancipated i.e. after he ceases to be

considered in law as belonging in the character of child,
as being under his care and government, the parents
family, he cannot take the benefit of a new settlement
acquired by the father, even tho he continues to live with
the father.

31.11.16
35.5
Shu. 138
3.41
Bar. 86
9.70
6.39
9.66
31.12.419
10.1.193
18.1.236
3.1.1.98
Bar. 26.3.1
10.1.193
31.12.55
10.4.99
9.5

Emancipation is effected 1. By tutelage.

2. By marriage.

3 By gaining a settlement of his own 11. By contrac-
ting any relation inconsistent with his remaining in a
subordinate station in his parents family i.e. inconsis-
tent with his remaining under the care and govern-
ment of the parent as that of a son.

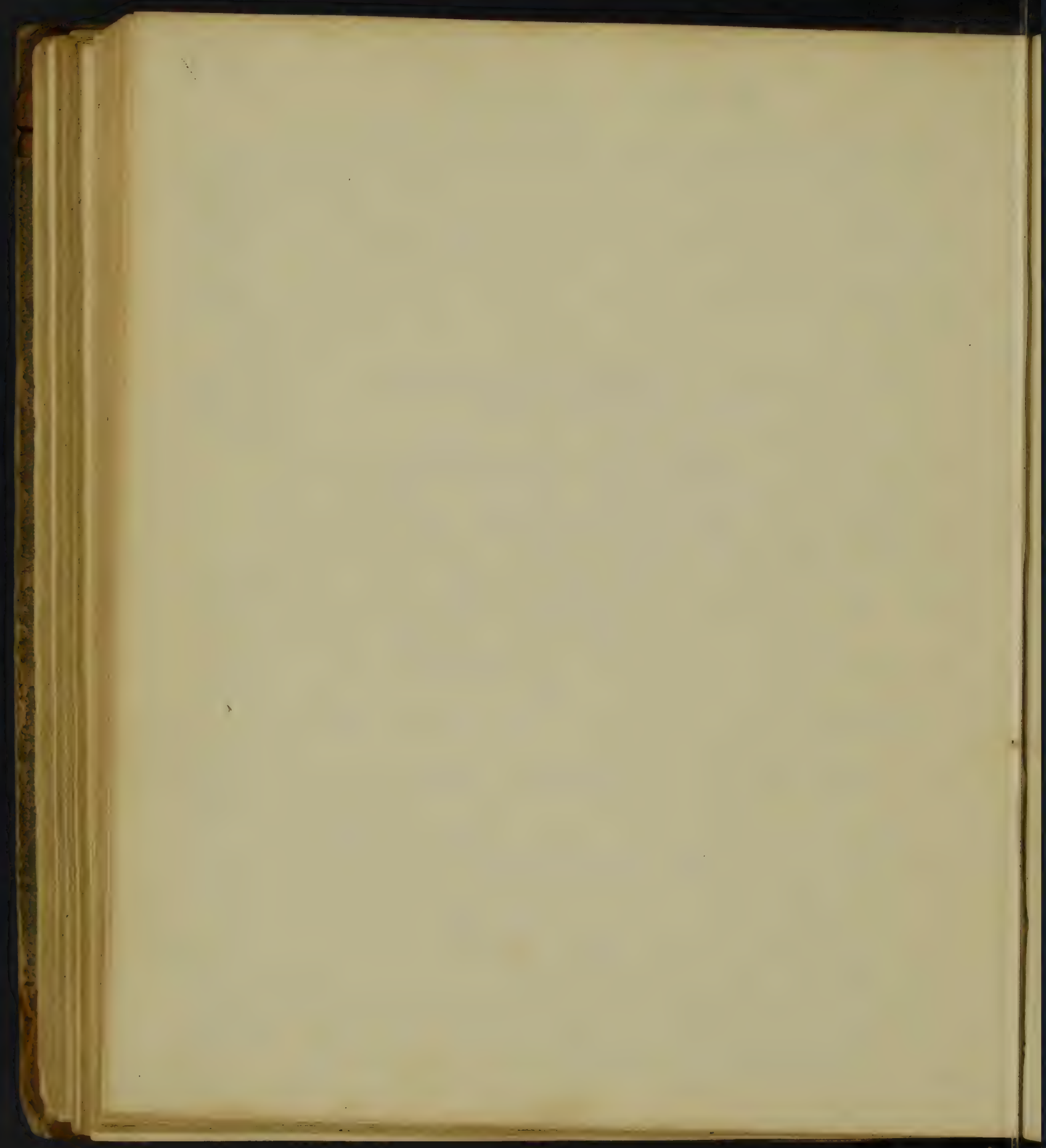
26.1.183
31.1.114
11.5
3.86
10.1.114
3.1.1.114
1.1.1.114
3.1.1.114

Attaining tutelage is not an emancipation if the
party continues a member of his parents family i.e.
if he continues as servant but suppose he
becomes a guest with the father.

3.1.1.114
1.1.1.114

2 Settlement may be acquired by marriage. In
marriage the husband's settlement is communicated
to the wife, tho not admitting the separation of hus-
band and wife.

1.1.1.114
1.1.1.114
1.1.1.114
1.1.1.114



Quarantine and Ward.

187
July 10

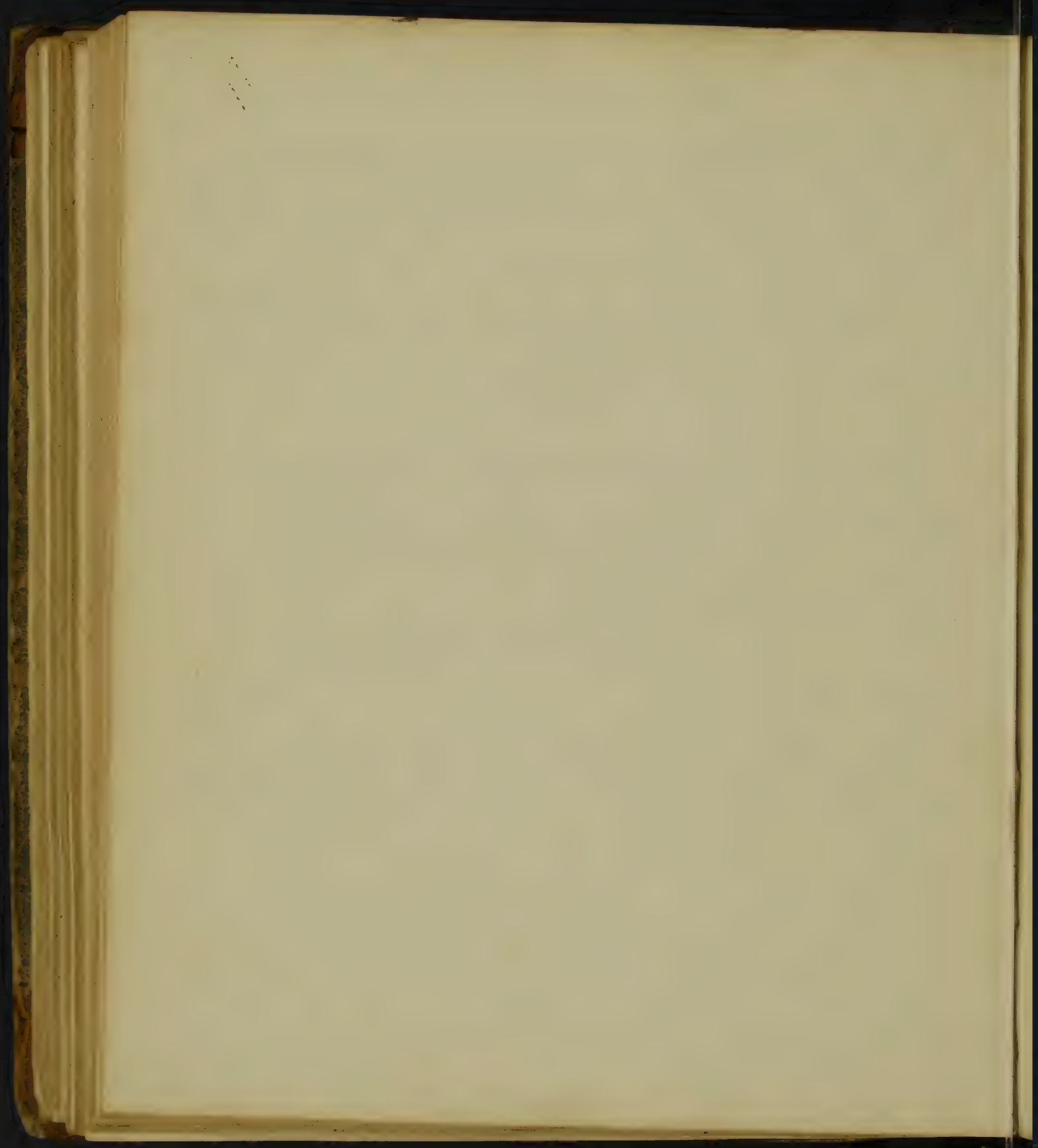
If then a woman settles in a marriage a man settled in B.
B is the father of her settlement and she is so far from her
maiden settlement.

And it has been decided that if the husband has no settle-
ment, here is suspended during marriage but revives on
his death.

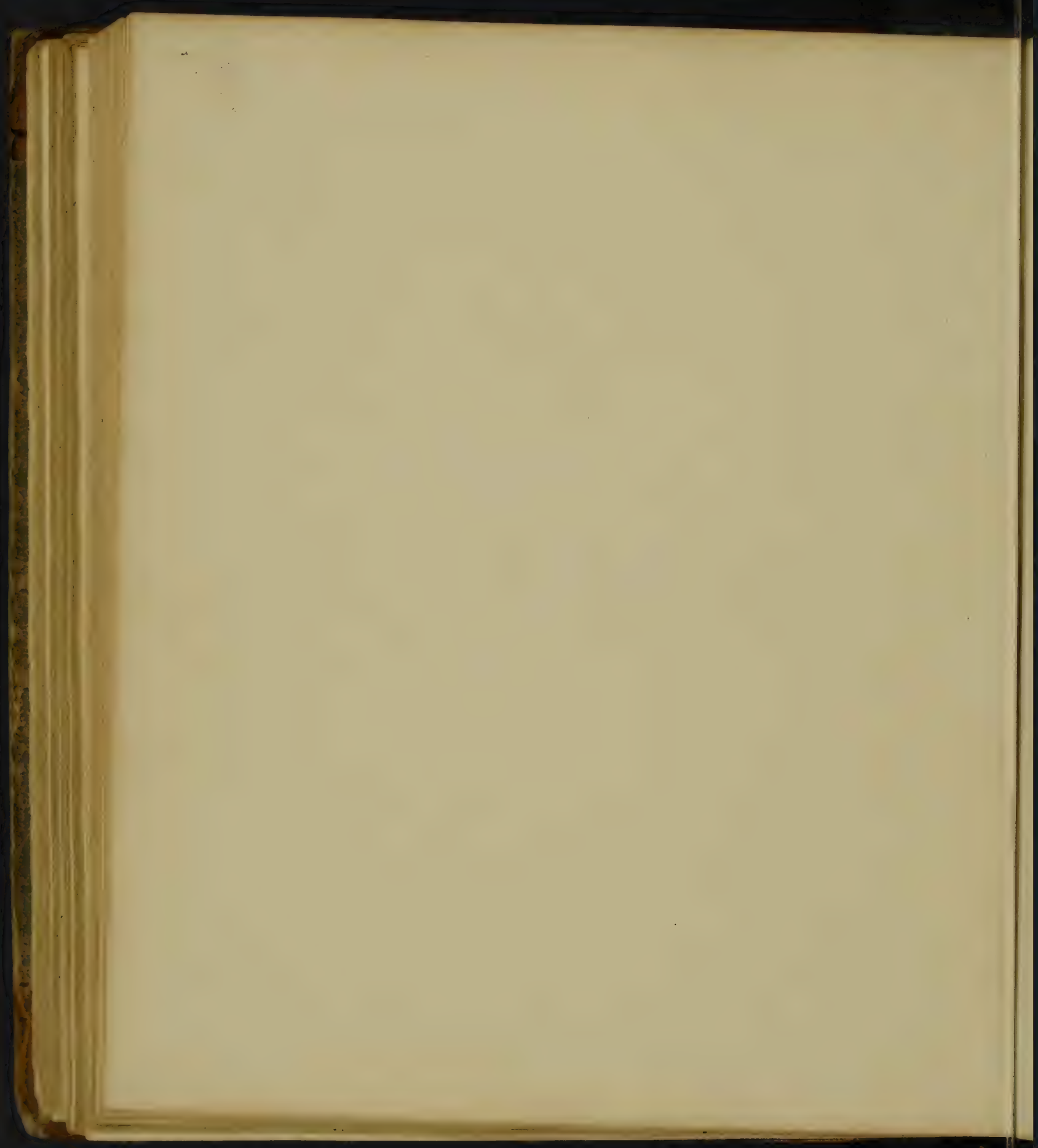
But it seems now established that if the husband having
no settlement, does not remain in the nation or being in
the nation, does not remain in with and support her, her
maiden settlement continues.

And the court held, that if a man has no settlement
here is not suspended.

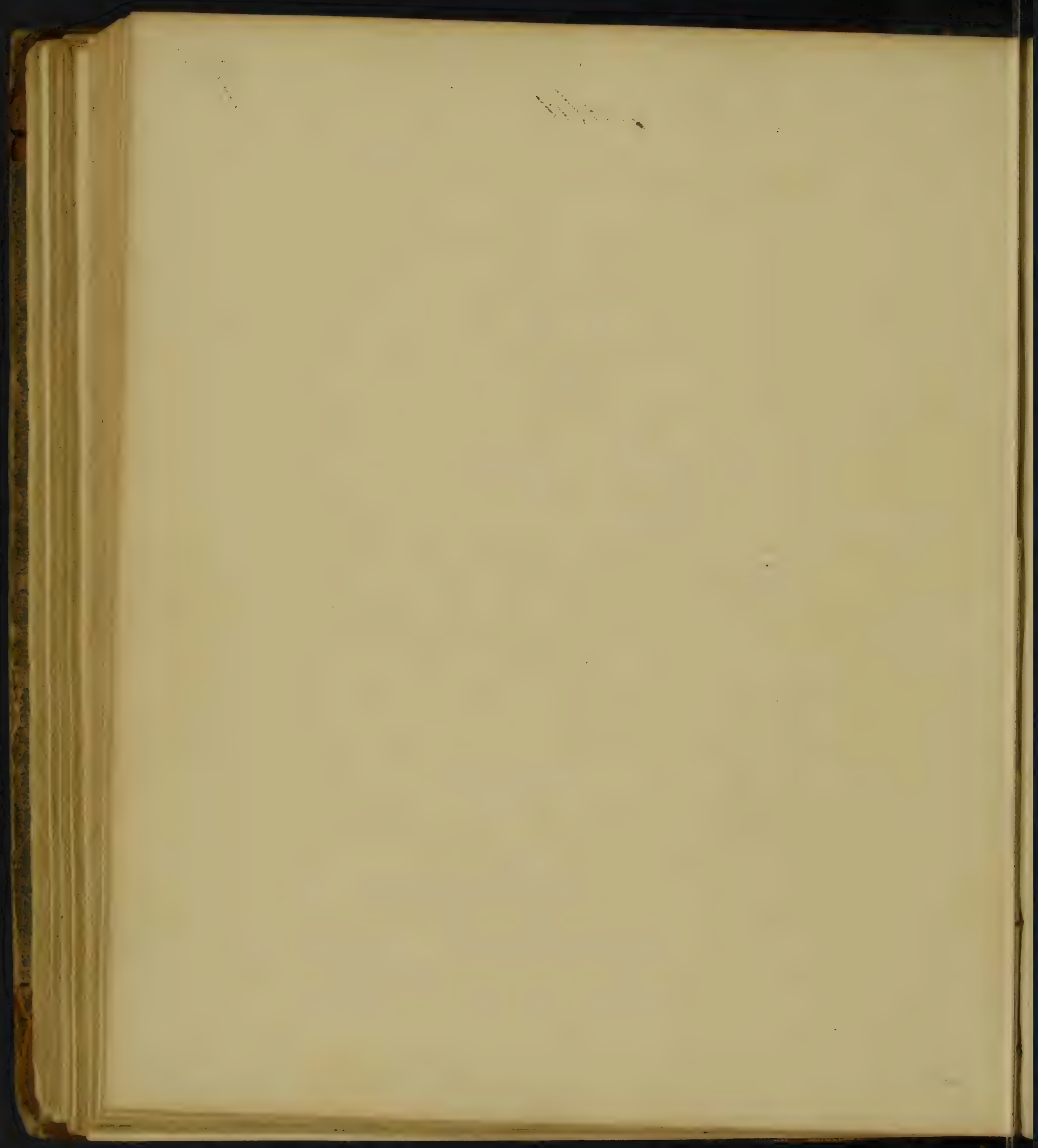
And in this case the children by the marriage
are entitled with her to her maiden settlement.



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191



Mr. Gould -
Master and Servant.

192

A servant may be defined to be one who is subject to the personal authority of another. A master is one who exercises such authority over another. This authority must be permanent, in order to constitute a servant, for a person subject to civil authority is not a servant.

This authority of the master over the servant is in part by virtue of some compact or agreement, between the master and servant or his guardian, and the rights of the master in most cases arises out of this compact or agreement.

There are 6 species of servants known to our law in Great Britain.

1 Slaves. 2 Apprentices, 3 meret men & 4 Day labourers. 5. Agents of every kind & 6. Debtors assigned in service under the Statute.

All com. law Slaves and debtors assigned in service under the Statute.

136.423

1611
1103

Master and Servant

6th. 665

service are not known.

I shall treat of these different kinds of servants in their order.

1. Slaves. It has been doubted by many whether our law is authorized the holding of slaves. If legitimate slavery was ever authorized in law it must have been either by natural law or common law or local law. 1st I say, Slavery is not authorized by natural law, if it is it either arises by a captivity in war, by contract, or by one being born a slave.

As to captivity in war, he said the captor has a right to kill his enemy, and therefore a nation has a right to deprive him of his slaves, but by the law of all civilized nations, this right does not exist. The belligerent has the right to kill his enemy only when it is absolutely necessary, if then they are taken the captor has no right to kill them. In their being the case there is no right.

existing to deprive those captured in war & ²¹¹ ~~211~~ ^{186.1923} of their liberty. The premises being untrue ^{186.1923} the conclusion must of course fall.

2nd Can one become a slave in violation of natural law by contract?

A contract cannot be the foundation of just slavery - Just slavery gives the master power of the life, liberty and property of the slave. As to life, this right can never be given to another for no man has a right to dispose of his own life. As to liberty I say no man can make a surrender of his liberty by contract because it is a transfer of his moral agency, and this cannot be done. As to property this is mutual for the ^{186.1923} property of the servant is the master's.

3rd Can Slavery be created by birth? This supposes a previous Slavery but as we have seen there can be none at first, there can be none by birth for its derivative.

Master and Servant

2. The question was raised by the com. law.
This question is at rest and always has been. The
Munroe law never admitted any species of private
slavery neither can the local laws of any other
country be introduced in Eng^d for if a foreign slave
lands in Eng^d he is ipso facto free and is protected

Litt 666
Loff. 1.

Litt 424

in the enjoyment of life, liberty and property.

In Eng^d under the feudal system there were
serfs who were called villains but they were
not absolute slaves for they had some rights.

Litt 187

194

201

206

207

208

209

but villainage was abolished at the restoration
of Charles I. in 1660. There is no slavery
now in Eng^d.

3. The word villain was originally syno-

nymous with the word slave and the word serf
with the word servant.

3. A slavery system under our local law I con-
ceive it has never existed I have not a doubt
in this subject a qualified slavery has and does

exist now in Connecticut, and it has been legal-
ized. I believe we have no Stat. expressly au-
thorizing it, but we have Stat. counting upon
the existence of Slavery, and making provision
for slaves. One of the Stat. makes provision that
a master might sue against his slave. I think
this is a decision of the question and further
the assent of the Legislature amounts to
a Legality. But it is said we have no judicial
decision, but the courts have decided that
Slavery now legalized for they have determined
that Mary may be taken in execution and sold
at the post - therefore a qualified slavery does
exist at this moment in Connectⁿ - the strict, ab- Hoslon 228
solute Slavery never did exist here.

It has been decided in Connectⁿ that there
will not be for taking a slave, but that an
action on the case will lie against any person
for taking or reducing away a slave, in the

+ Qu. Can a slave bring an action sounding in contract, as
upon Bailment of property —

same manner, as if an apprentice were seduced away. Cowles says this action is heppaf, but this is a mistake.

A Slave may hold property, and sue for it by his next friend, he may be a devisee, legatee, or take by descent. i.e. he may inherit an estate.

A Slave cannot make contracts, for this is forbidden by Stat. But the master cannot take the property of the Slave, if he does an action with lie against him.

If a Slave marries with consent of the master, he is ipso facto emancipated, and the ground of this is, that the Slave has made a new relation, inconsistent with his former one.

If he marries without the consent of the master he is not emancipated. A minor child is emancipated from his father, if he marries with his consent.

3). R. 956

2 H. 4 B 511

2 B. L. 913

A Slave cannot be freed from servitude if he



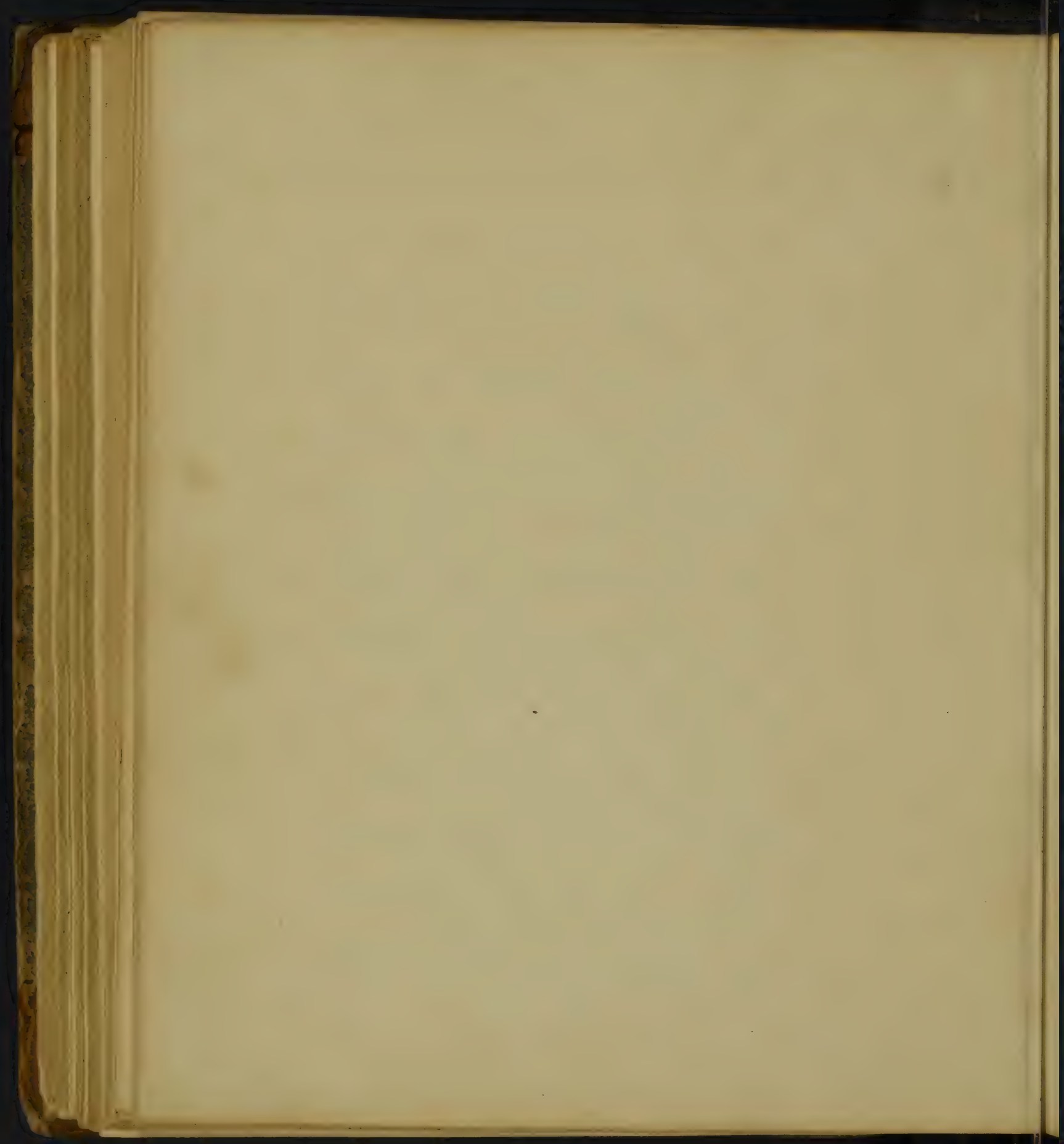
marries without the consent of his master; But if a Nef married a freeman she was discharged during the cohabitation, and if married to her Lord she was freed during life, and if to a slave she continued a Slave still.

It might be a question whether an illegitimate child could become a slave in Connecticut independent of usage. The usage in Connecticut has always been the same as the civil law, according to which the offspring follows the condition of the mother.

But this is not the rule of civil law in England, ^{Lib. Sent. 187} for there the child follows the condition of its father. ^{2 B. & C. 438}

I think independent of usage that an illegitimate child cannot become a slave in Connecticut.

But Slavery is now almost entirely abolished in Connecticut. The importation of them is entirely forbidden. And as to children born of Slaves, after the 1 March. 1788 till August 1797 they were to be freed at the age of 25 - and all born after August 1797 were to be freed at 21 years of age.



I have said that private personal slavery is unknown to the common law of Engl. But it is agreed by all that on the principle of com. law. offenders may be judicially condemned to slavery, and as a punishment - as confinement in Newgate &c.

Now this is a civil qualified slavery - is not personal slavery, for they are slaves to the public & those who have the management of them are agents for the public.

c Apprentices.

An apprentice is so called from the french word *apprendre* signifying to learn, and the reason is that servants under this description, are generally the not universally bound out for the purpose of getting instruction. 136.426

It is a rule of com. law that every apprentice must be bound by deed. This relation must be created by deed. A parol contract is not binding on the parties. and I know of no other instance in which a deed was necessary to create a right or to make a personal contract at common law. but I suppose



The reason why this was required to be in writing or by deed was that the personal liberty of the apprentice was too sacred to be parted with by parole.

6 inst 132
20 May 117
Talk 68
2 inst 64
192

And it has lately been decided that a defective contract of apprenticeship cannot be construed into any other species of contract - as a hiring for a year month &c. The law will imply no such contract so the deed is void.

8 J. R 379

Indeed it was formerly said that there could be no such relation as master and servant by apprenticeship unless the latter was retained in the deed by the express name of apprenticeship. This is now however denied to be true. The intention must now govern, let the words be what they will.

1 Burn. Jan. 57
3 Rec 346
5 J. R 379
1 Est 538

All other kinds of servants may be retained by hand contract.

3 Rec 346

And by several Statutes in Eng^d the children of all poor persons may be apprenticed out by the overseers with the consent of two justices till 21 years of age.

By poor persons says all Gent^l Apprenticeship is meant paupers, and not persons of small property sometimes denominated poor.



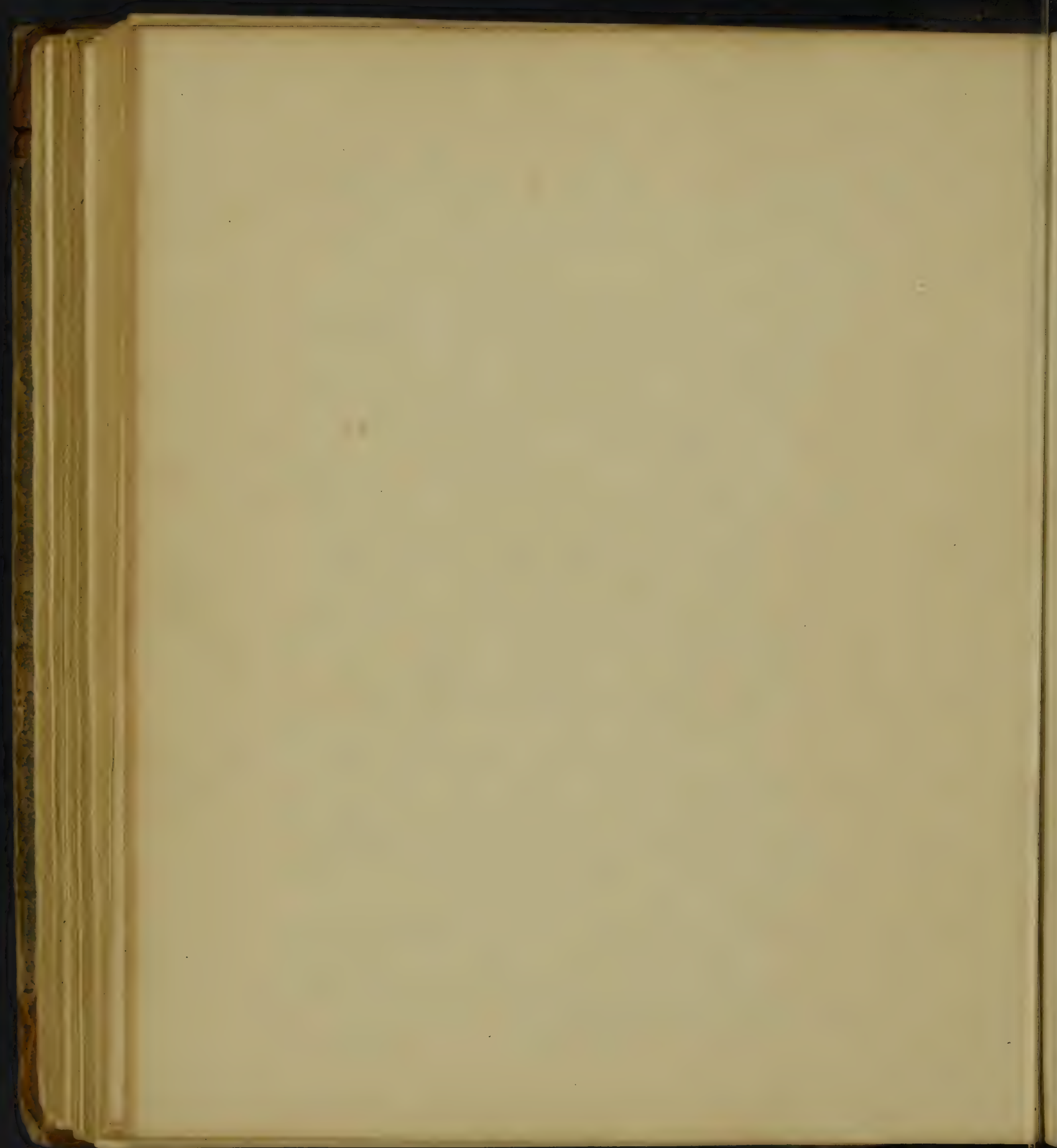
And the same law provides that the justices are empowered to examine such persons and offer them as apprentices that he is willing to take them, with a fine or penalty in case of refusal. 13. 6452

The law also provides that except that no person is compelled to take such apprentice, but that provides that the children of paupers living idly and misbehaving their time in lecturing, whereby they are exposed to want and distress, or if the select men find their parents negligent of their duty, whereby such children grow into stubborn or unruly - they may be bound out by such select men with the advice of the next assistance justice of peace to some master or masters, the Stat. 123 until 21 years of age & females till 18. 553

All servants except apprentices are entitled of common right to wages for their service done, and may recover them by action as any other debt.

Where there is no express agreement as to the amount, the servant shall recover upon a quantum meruit.

The wages of menial servants are agreed



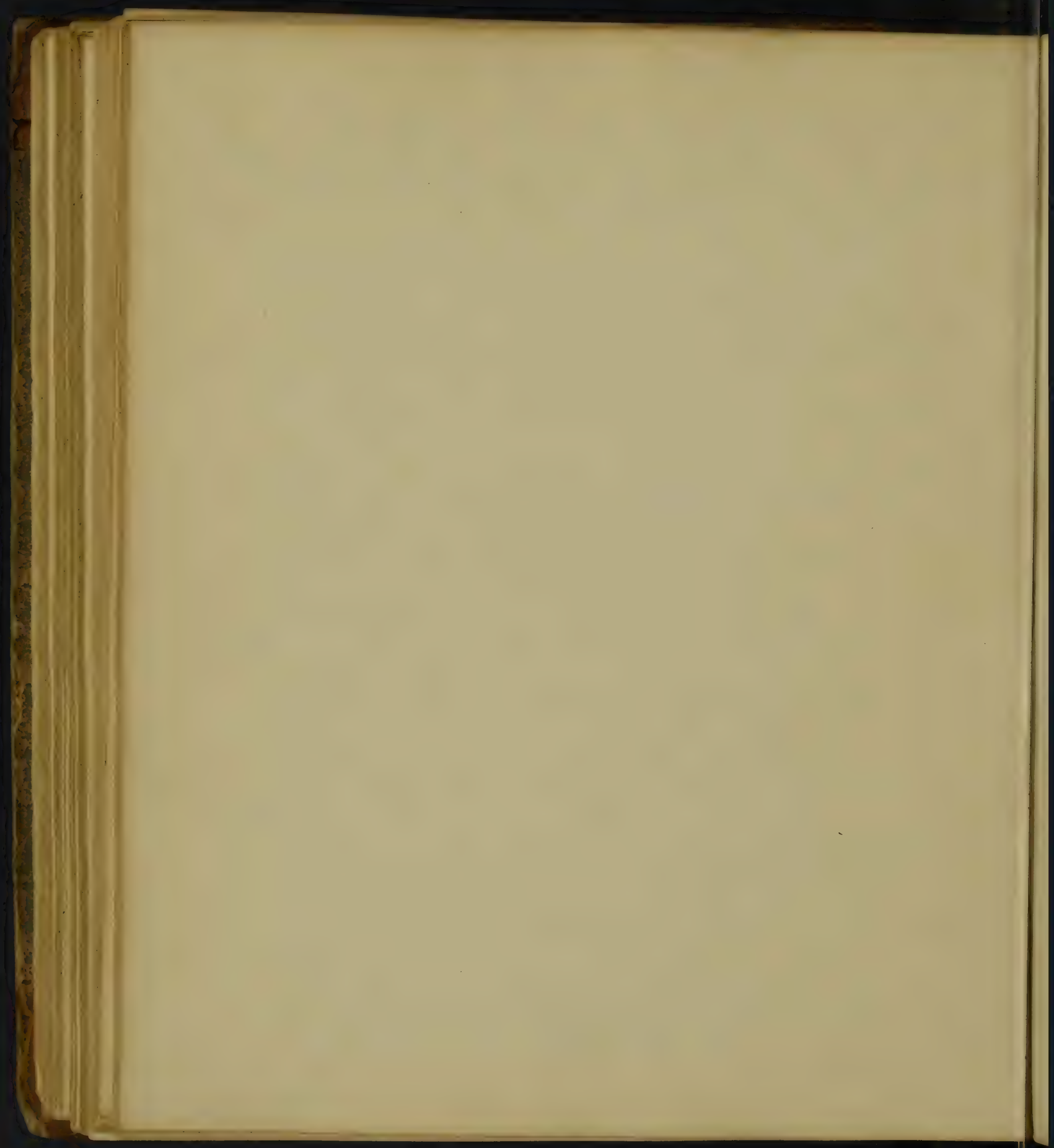
upon and settled by the parties. Those of day labourers
are by Stat. to be settled by the Sheriff of the County
or the justice at the leffions. 136.428
1453

The Statute that the wages of the servants are set
by the contract between the parties and so it is
in only except as to labourers in husbandry.

Apprentices are regularly entitled to no wages,
unless there is an express contract to allow them
wages. If the indenture is silent as to wages the
apprentice can recover none. And when it is said in
the books that the apprentice does not receive
wages, it is not meant that he cannot receive
wages by special contract. 37.2779.

The fact is they do not at common law
right receive wages but if the master stipulates
to pay wages, he is bound to pay. 10.2.422

The Stat. 5 Eliz. provides that minors may bind
themselves by their own contract of apprenticeship.
but according to the construction put upon this
Stat. they are not liable upon their covenants.
The only effect of the Stat is to make him liable
as long as the relation of master and servant continues



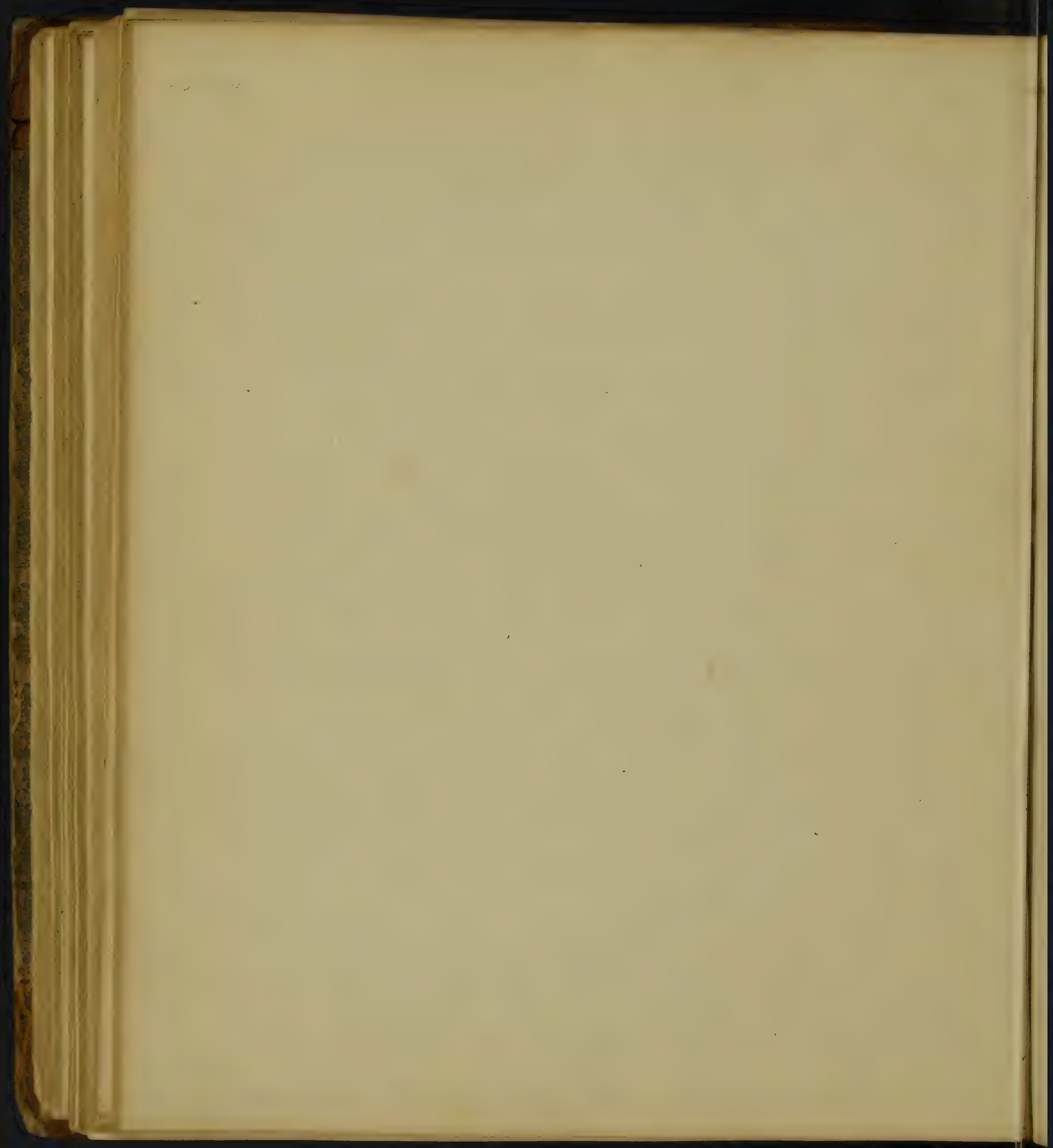
the facts, so long the parties are subject to the
 duties and enjoy the rights of that relation, and if he
 leaves his full time he is free of his master the same
 as if his father had joined with him in the indenture.

Jan 1/47
 Feb 1/49
 179
 Since 190
 Aug 6/01
 9/15
 Feb 7/15

The rule therefore as to the minor servant's lia-
 bility on his covenant remains the same as at
 common law notwithstanding this Stat.

but if the father or Guardian joins with
 the minor in the indenture, such father or Guardian
 is bound by the covenant, that the minor shall
 serve as an apprentice. But the apprentice
 himself is not liable. We have no such Stat. as the
 5th Eliz. in connectⁿ and if this Stat. introduced a
 new rule, it is not law here, but if it is in affirmance
 of the common law and I am inclined to think it is,
 says Mr. Jones, it has not so received in Eng^d, it
 may be viewed as law here.

The master is bound of course to provide ne-
 cessaries for his apprentice unless otherwise agreed,
 and being in loco parentis he is bound to protect
 him. Hence misuser is good cause for the apprenticeship



to leave the service of his master.

10th. 518

Then he must have whether he stipulates for them or not, unless he stipulates not to have them.

A winner is a good plea in bar if the servant is dead, and a good cause of action against the master upon the covenant.

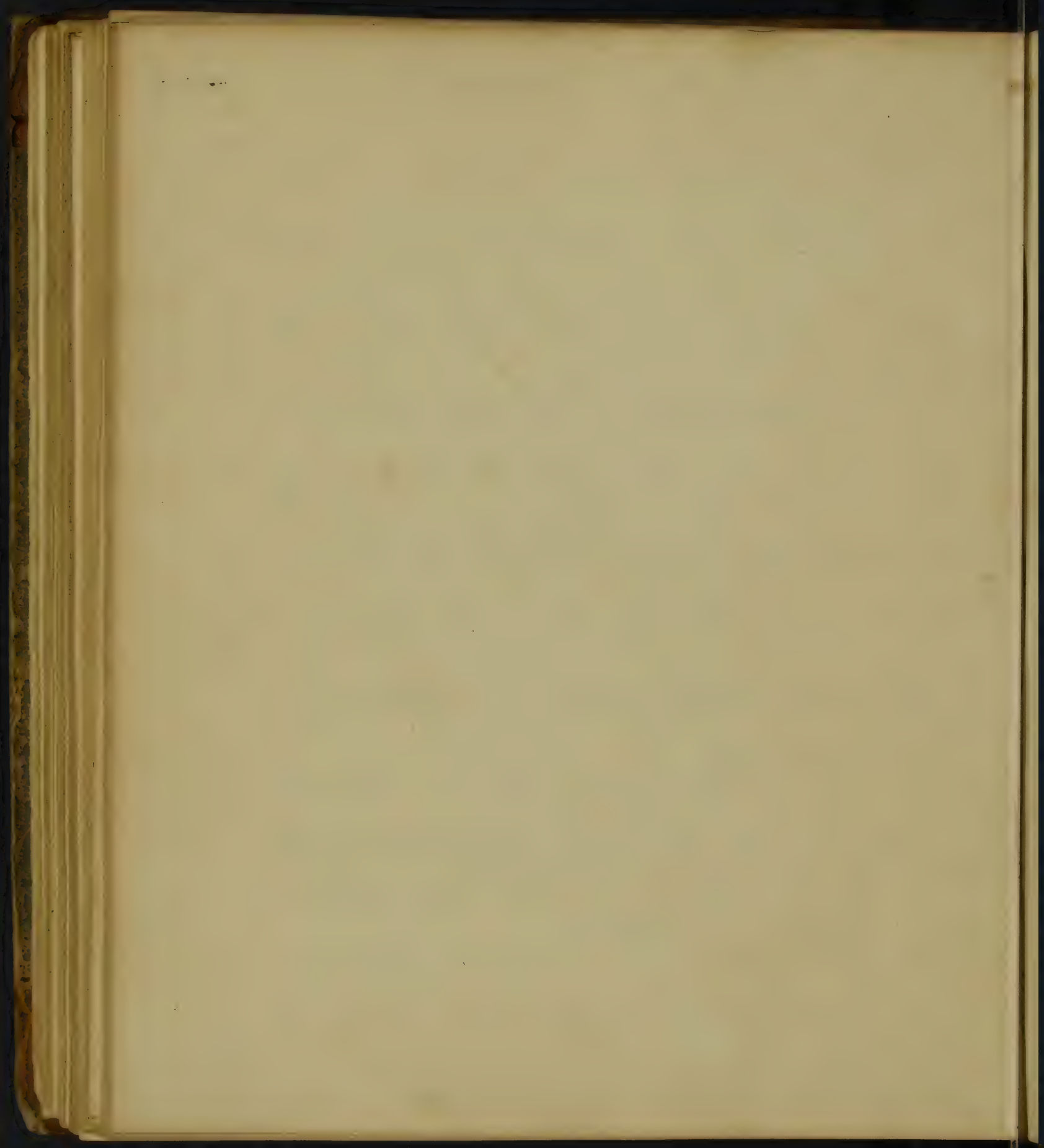
It is often laid down in the books that an apprentice cannot be discharged otherwise than by deed. This rule however requires qualification. It is true that he cannot be discharged by contract express, or except by deed but in case of personal abuse the servant is discharged, and this too without deed, the master however is still liable on the covenant.

Le Roy 1117.
Salk. 68.
Embe 182.

The meaning of the rule is that the servant cannot be discharged, by agreement, any other way than by deed for the maxim of the law is "*eo ligamine quo ligatur*".

But the contract may be destroyed and the apprentice discharged otherwise than by deed - the contract may be cancelled by both parties, or one may deliver up his indenture to the other, and it

Ha 382
Salk 254
250



2 H.L. 8574

17.2.638

destroys the contract on his part.

And it was decided in the case of *Tomson v. Wood* in our Sup^t Court that the master after having turned away the servant without the consent of the father could not reclaim him nor recover upon the covenant. It was a discharge of the Serv^t yet there is no doubt but that the father or his father could recover against the master on the covenant, for the master was guilty of a breach of covenant. it was a fraud. A fraud discharge in this way is not then a discharge in toto.

12 May 1853

We have a Stat. enacting the court of common pleas in case of any default or breach of covenant by the master to discharge the Serv^t and in case of default of the Serv^t to punish him at Stat. Court by discretion.

A similar Stat. is enacted in New York, and in most of the other States.

By the English law there are three forms in which apprentices may be discharged viz. by complaint to the quarter sessions, or by two justices, or by one justice, with liberty of appeal to the



Quarter Sessions.

This authority is exercised in Eng^d only in those cases where the binding was by agency of the law - as by magistrates - But in Conn^{ct}. it makes no difference who bound the apprentice.

3 Bac 550

1 B. & C. 426

The master may also apply as well as the apprentice, and procure a discharge for a reasonable cause.

It is a well established rule of law that a master cannot assign his apprentice. He who has an interest may in general dispose of it, but a master cannot dispose of the interest which he has in his apprentice, and the reason is because the contract is fiduciary. special confidence is reposed in the master.

Holt 194

Kell. 250

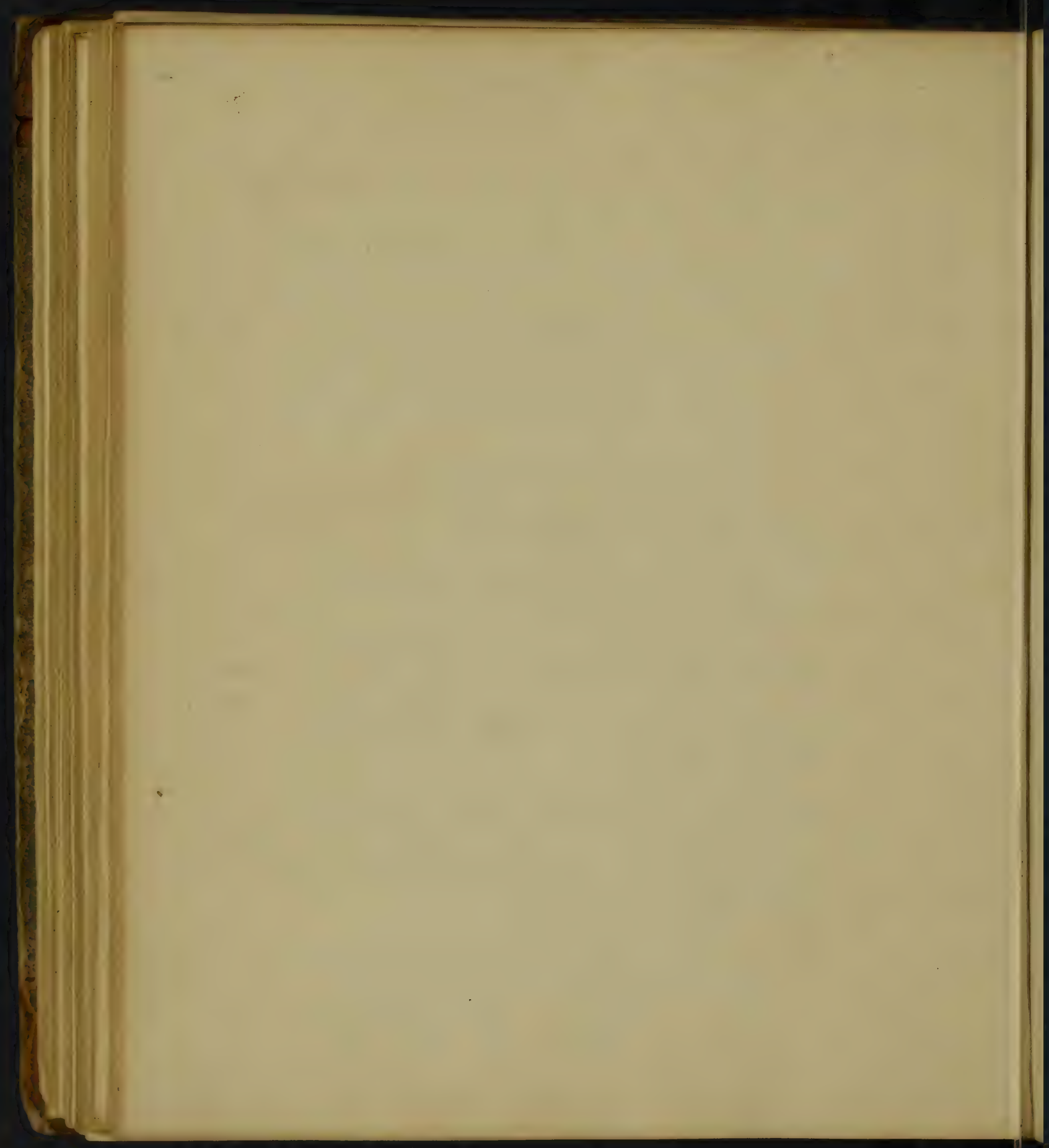
The education and morals of the servant are to be attended to by him, and by no other, unless specially provided for in the indenture.

Jalk. 68

12 Mod 558

3 Bac 555

It is a general rule that a personal trust, or confidence cannot be assigned of course on a sale of arbitrators that an apprentice shall be assigned is totally void, unless the apprentice



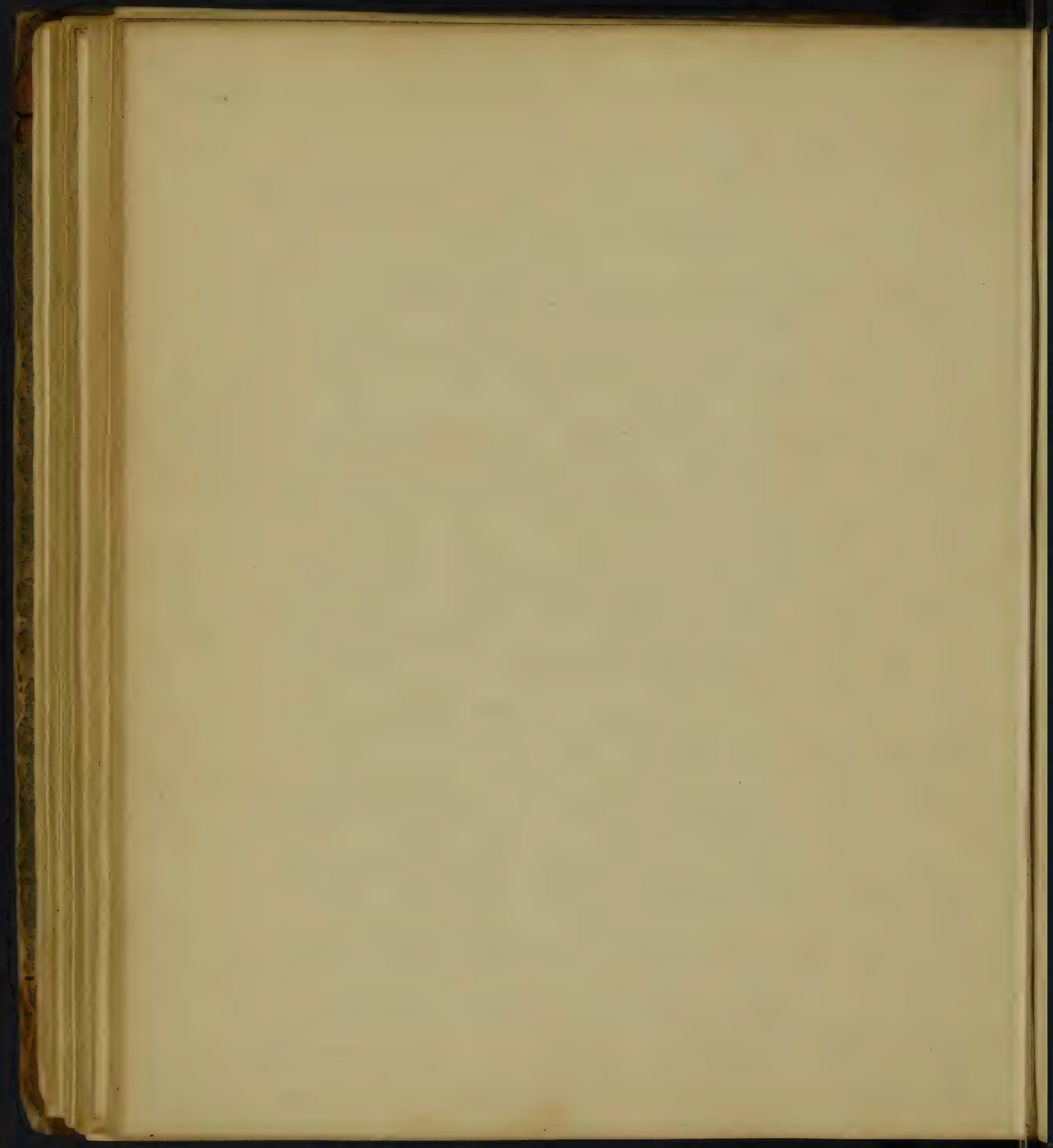
consents to the assignment.

But the indenture can be transferred by a covenant of assignment, yet such covenant of assignment is good as between the assignor and assignee. The assignor is liable upon his covenant and the reason is because the rule of law tho' the master cannot assign was intended altogether for the advantage of the apprentice and not of the master.

2 Ma. 1167
to King 653
Jule 68
Mich 96
May 69

But if in such assignment the apprentice does not forth go into the service of the assignee, he acquires all the rights under him as under his original master. He acquires a fellowship, and app. M^r Gents I take it he would be free of his trade, if he were in pursuance of his indenture.

Upon the same principle that the master cannot assign his apprentice, he is bound to keep him under his own care and protection & hence it has been held that the master has no right to send his apprentice abroad, for the purpose of instructing in his trade or profession, unless



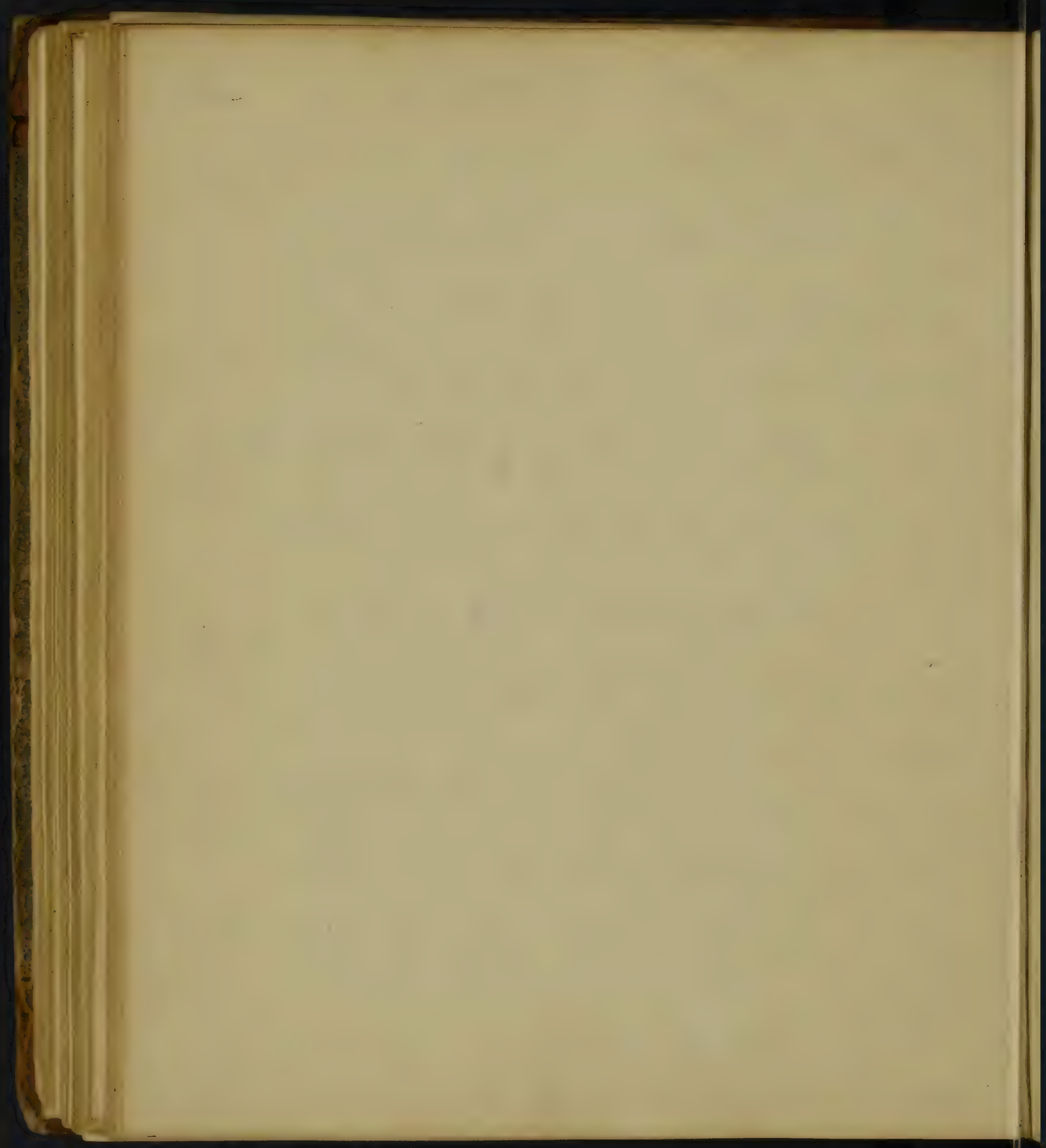
The terms of the agreement in the indenture allow of it as the nature of the employment requires it. Holt 134.

It is expected that seamanship is to be acquired only by going abroad - this is the nature and the object of the employment. But when a surgeon-apprentice was sent to the East-Indies because the advantages were thought to be better there, the master was held to be liable on the covenant. 8 mod. 236
12 m. 446
Salk 698
The nature of the business did not require it; nor did the indenture allow it.

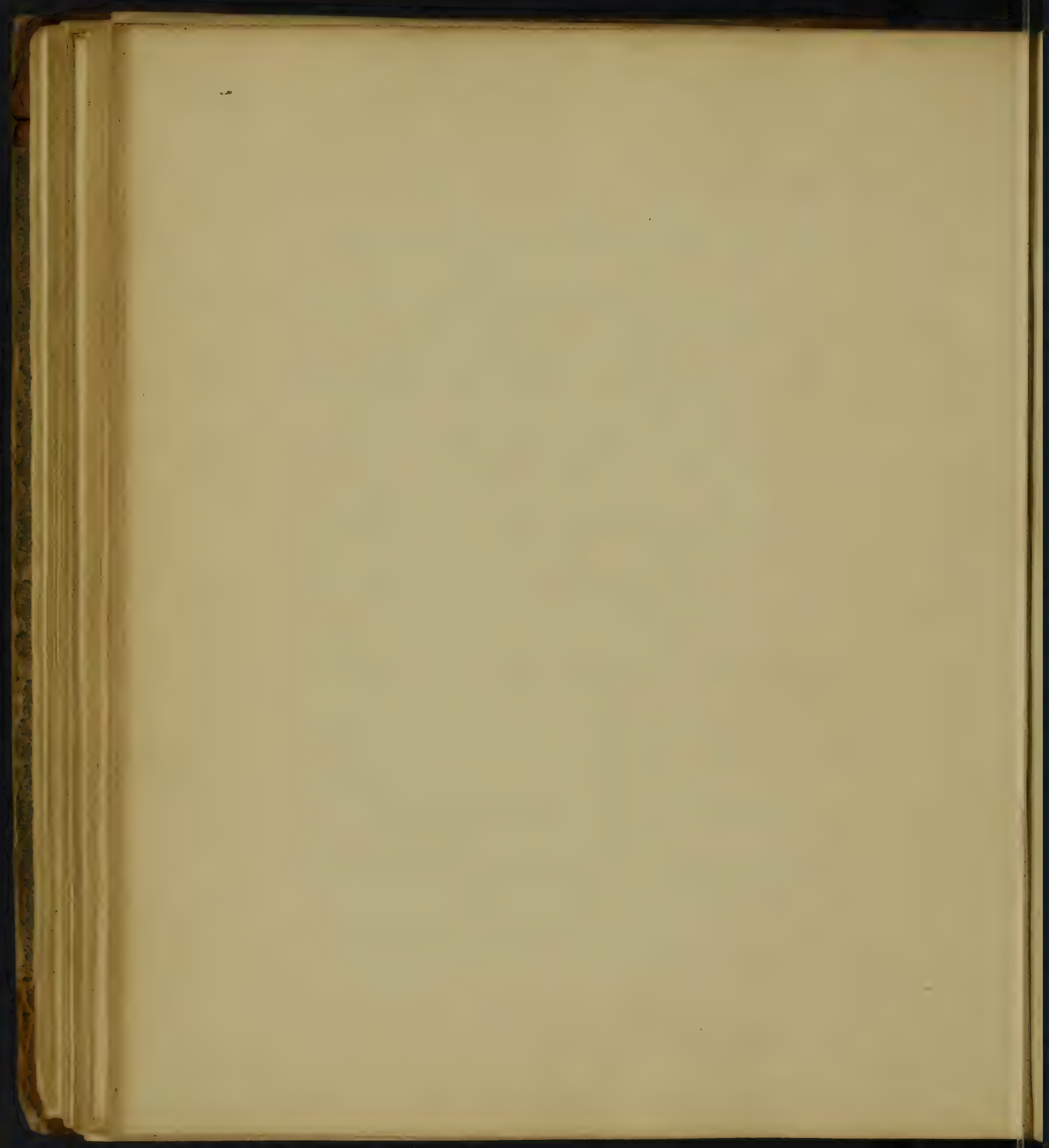
The Executor of the master after his death cannot hold the apprentice to service, and this for the same reason, that the master cannot assign. Sha 1267
Salk 69
7 mod 35

But it has been once held that the Exec^r is bound on the covenants of his testator to teach or to procure to be taught the servant of the testator. This however has since been denied to be law. 1 Lev 177
1 Sid 216.
See author in margin and in Watsons law of Tort - see trips. 296. 2 Sha 1276
Salk 66

Whether the Exec^r of the master is bound to furnish clothing and diet for the apprentice is



a question not yet settled. According to the consent of authorities says Mr Gould, after the death of the master his Exec^r is bound to furnish clothing and diet and other necessaries, according to the covenant of the master, but not to teach him in his profession or trade. This says Mr Gould seems to be a bold rule, and perhaps not founded on principle. The consideration which moved the master to retain the servant and furnish him with necessaries, was undoubtedly the services of the apprentice. But as has been before said the Exec^r cannot hold the servant, nor take any benefit of his services, the mutuality of the contract is then destroyed if he must furnish necessaries. The consideration for these necessaries fails. I suppose says Mr Gould the ground of the rule is that the covenants are independent of each other. The master does not expressly covenant to furnish necessaries in consideration of services. nor does the apprentice covenant to serve in consideration of necessaries. The court

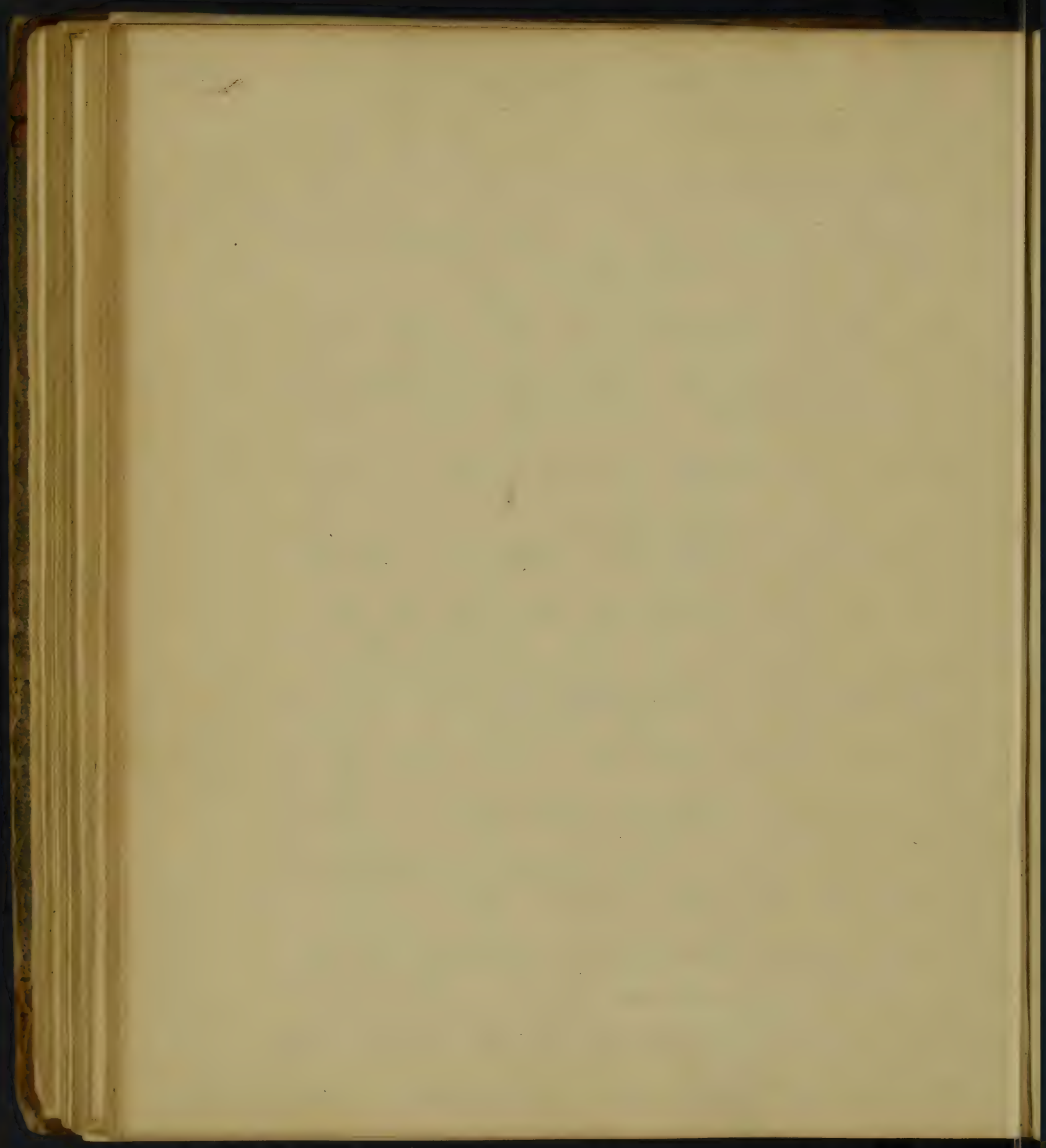


supposes that these covenants are independent, and that performance by one party need not be averred in a declaration in order to entitle him to recover against the other party.

3 Ch. 141
 Prob. 558
 1 K. 761
 570
 12 Reg. 90

The parties should have covenanted otherwise expressly so that they may be dependent. It makes no difference as to the duties of the Exec. whether he be expressly mentioned in the indenture, or not his duties are the same.

A premium is often given to the master besides the services of the apprentice. If the master dies before the term expires it is clear that the Executor ought to refund a part of the premium or furnish necessaries. Part restoration in this case is in Eng. a subject of equitable jurisdiction. Courts of law will not give a restoration, unless provision is made for it in the indenture. There is one case says Mr. Gould where the court of Chan. carried this doctrine of restoration too far. They went beyond principle. It appeared that the parties in the indenture had agreed upon a restoration in case

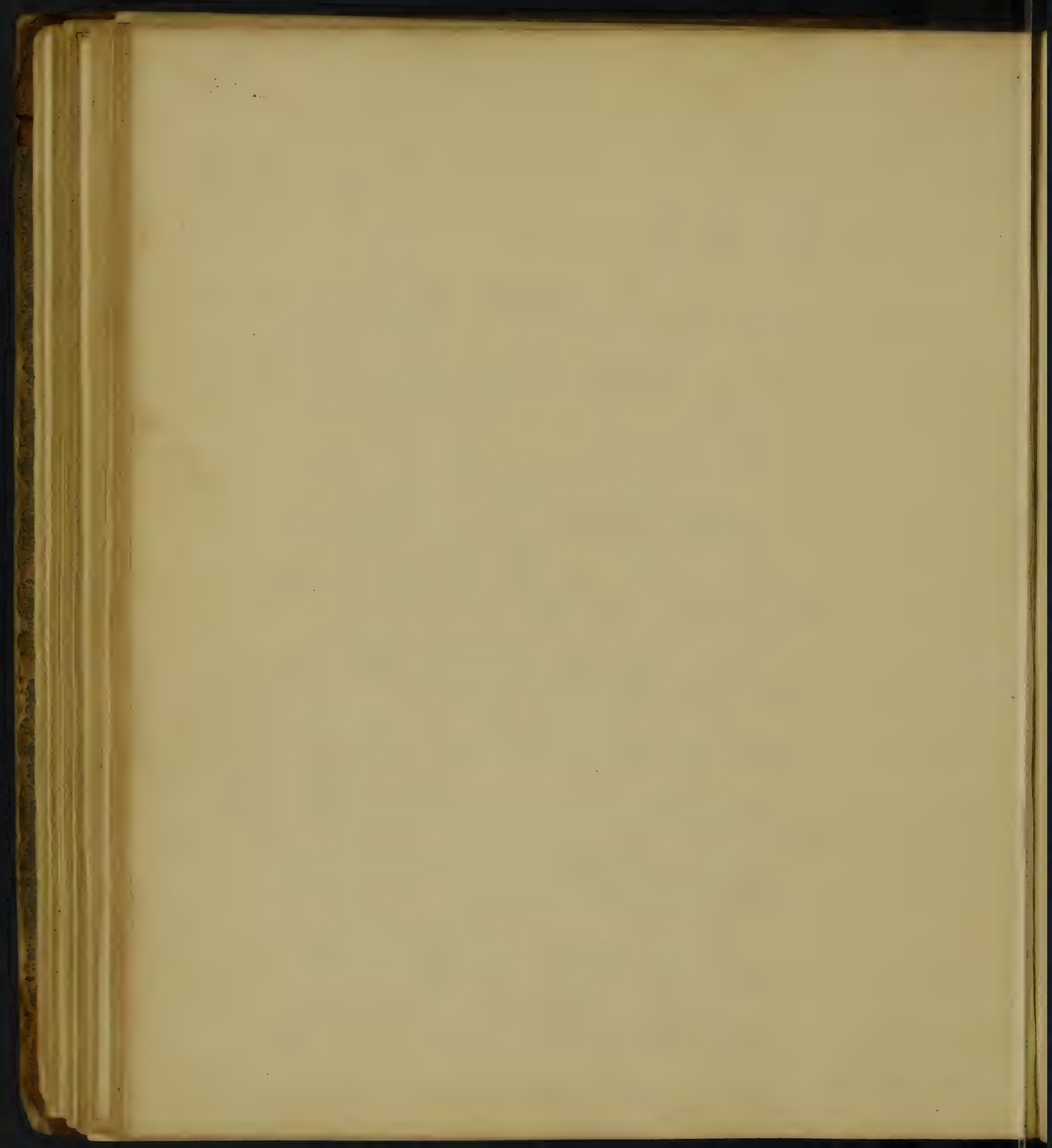


of the death of the master before such a time. But 1 Ver 460
 The chancellor decreed a restoration of more than 1000 1196
 was agreed upon by the parties. 1 Atk 119

And if the master turns away his apprentice
 and the apprentice does not return the master
 may be compelled to refund a proportionable
 part of the premium. 2 Ver 64

It has been held that if the master
 becomes a bankrupt, the assignees may be compelled
 by Chanc^y to refund a part of the premium. But
 the court of Deputies, justices &c are expressly
 authorized by Stat. not only to discharge the ap- 1 Atk 114
 prentice in case of bankruptcy, but also to com- 20 Bae 550
 pel the assignees to refund, and the right of 1 P. & S 92
 restoration arises from the discharge, and not 12 mod 415
 until the discharge. — why then is Chanc^y appealed 1 Atk 67
 to, to compel a restoration? 1190
 12.6.452
 11.2.52 410

Whatever an apprentice earns by his labour
 while he is an apprentice belongs to the master,
 and this is the rule where he is an apprentice the
 fact ^{well as} when he is an apprentice de jure. The



Master is entitled to all his services, and if he receives money for the master's also and the prop^y thing acquired or earned by the Servant may be recovered in any form of action against the person who is bound to pay it in favour of the master.

6 mod 69

10 mod 455

Salk 65

11 mod 53

And the rule holds the same if the Servant takes for another without the master's consent, and out of the line of his occupation.

11 mod 587

12 mod 416

It is otherwise with menial servants - day-labourers &c for these may acquire property by their own labour, and it shall not be the master's if they do not neglect the service of their master.

1 Inst 117^a

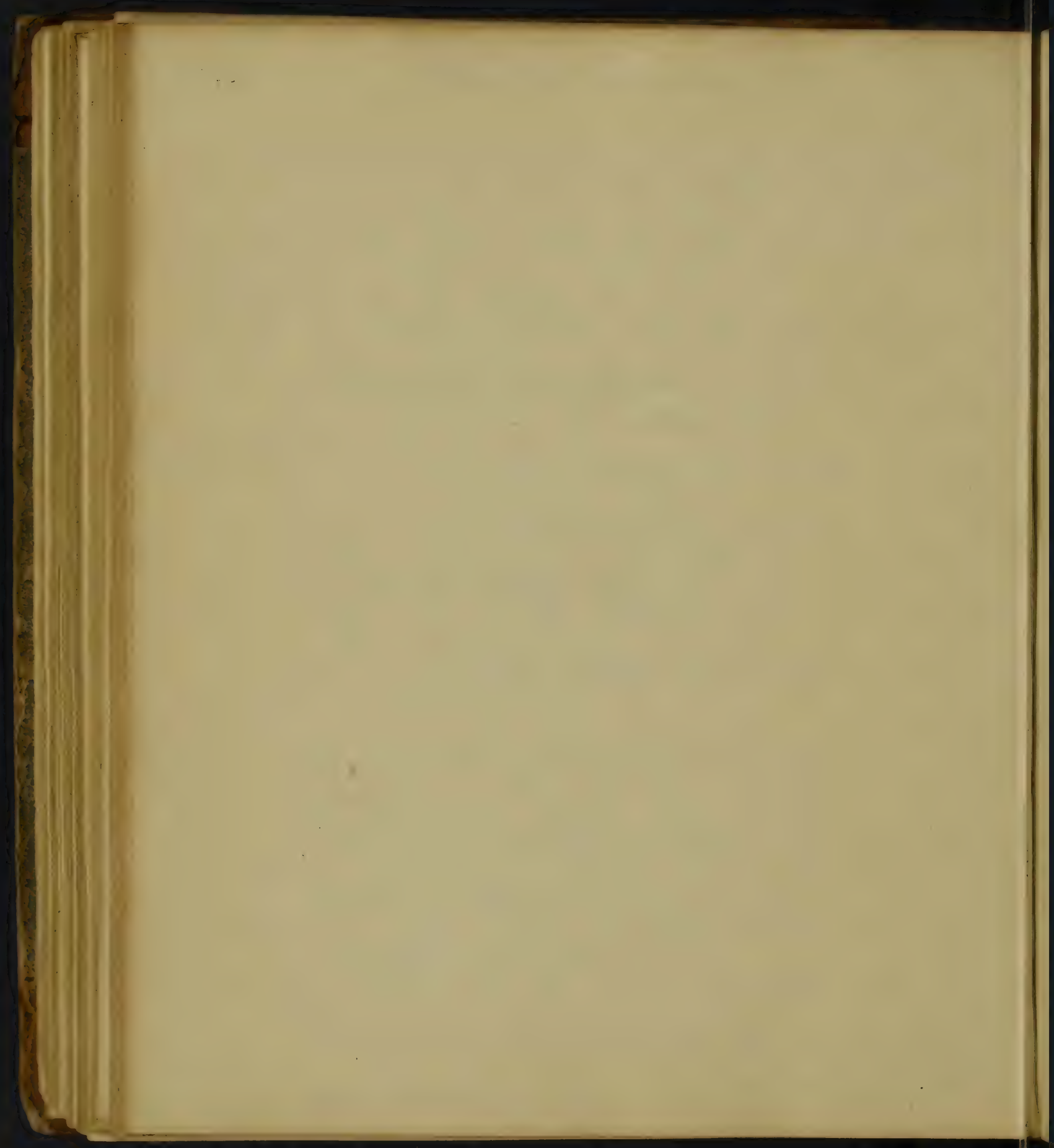
The whole time of an apprentice is to be devoted to the service of his master, but not so with other servants - but if they neglect their master's service action will lie against the servant or against the employer, if he is known.

Cro. 653

2 Cro. 63

3 Cro. 567

If an apprentice or any other servant is enticed away from his master's service action lies against the enticer and it has been deter-



ruined that a journeyman is within the rule. Couch. 65
7 June 26.

But if the party who entices away a servant does not know of his service which is due to another man, or cannot have the means of knowledge no action will lie against him.

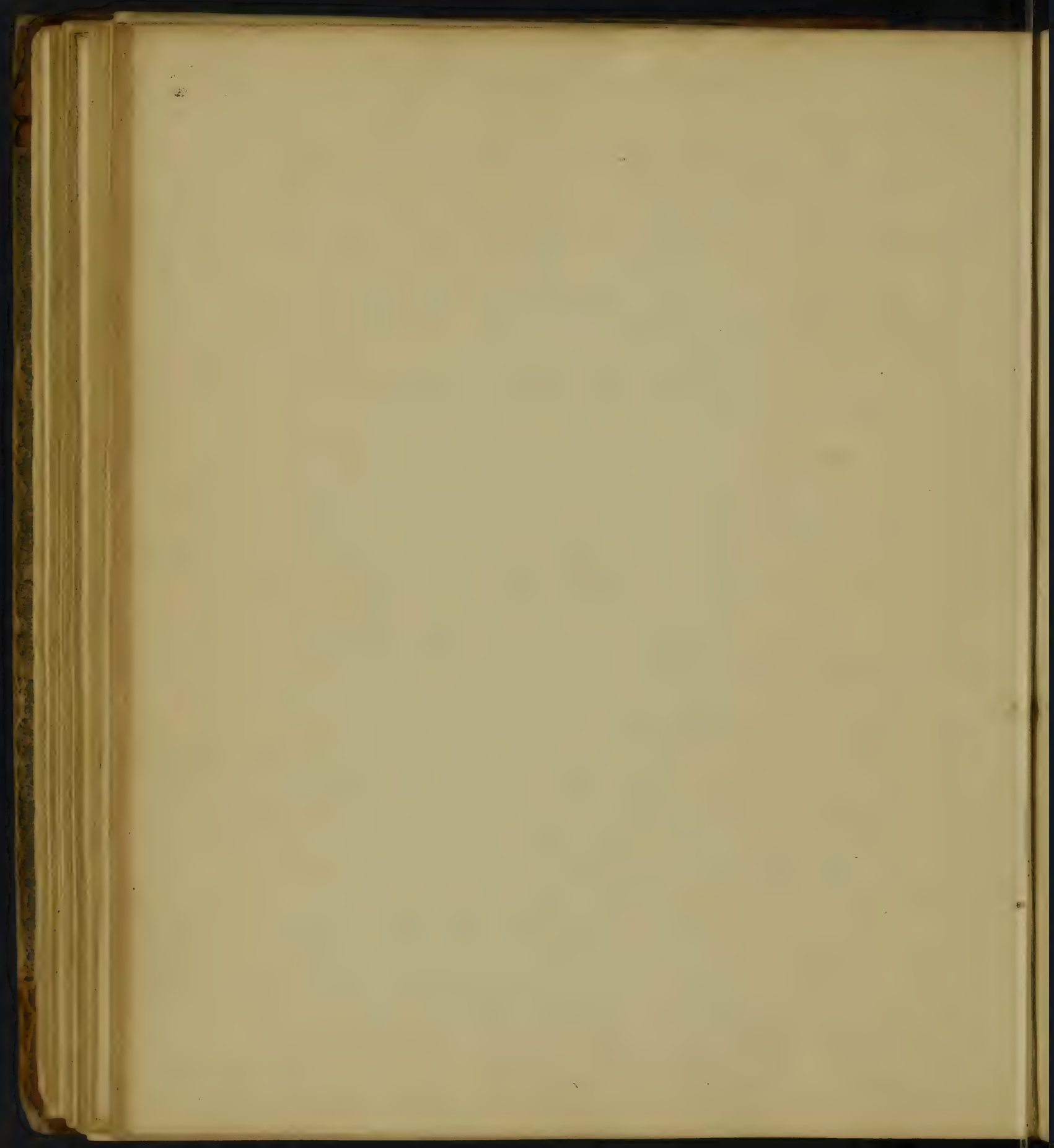
as to the proper form of the action if different as the circumstances of the case differ. If one

takes away a servant by force he shall vi et armis, &c. &c. but for enticing away a servant no force being used case seems to be the proper remedy. 11 Mod. 169
2 D. Ry. 1119
Talk 380

In the case in Cowper however the gravamen of the action it seems was enticement, and yet the Reporter calls it heppass. If this is not a mistake of the Reporter (says Mr. Gould) I cannot be reconciled to the general rule. 4 Bac. 567
109 105
2 D. Ry. 167
2 May 1652

In Eng^d an apprentice gains a settlement in the parish in which he served the last 40 days according to an Eng^l Statute.

In Conn^t an apprentice gains no settlement by apprenticeship i.e. by a residence with his master - we have no rule for the settlement of

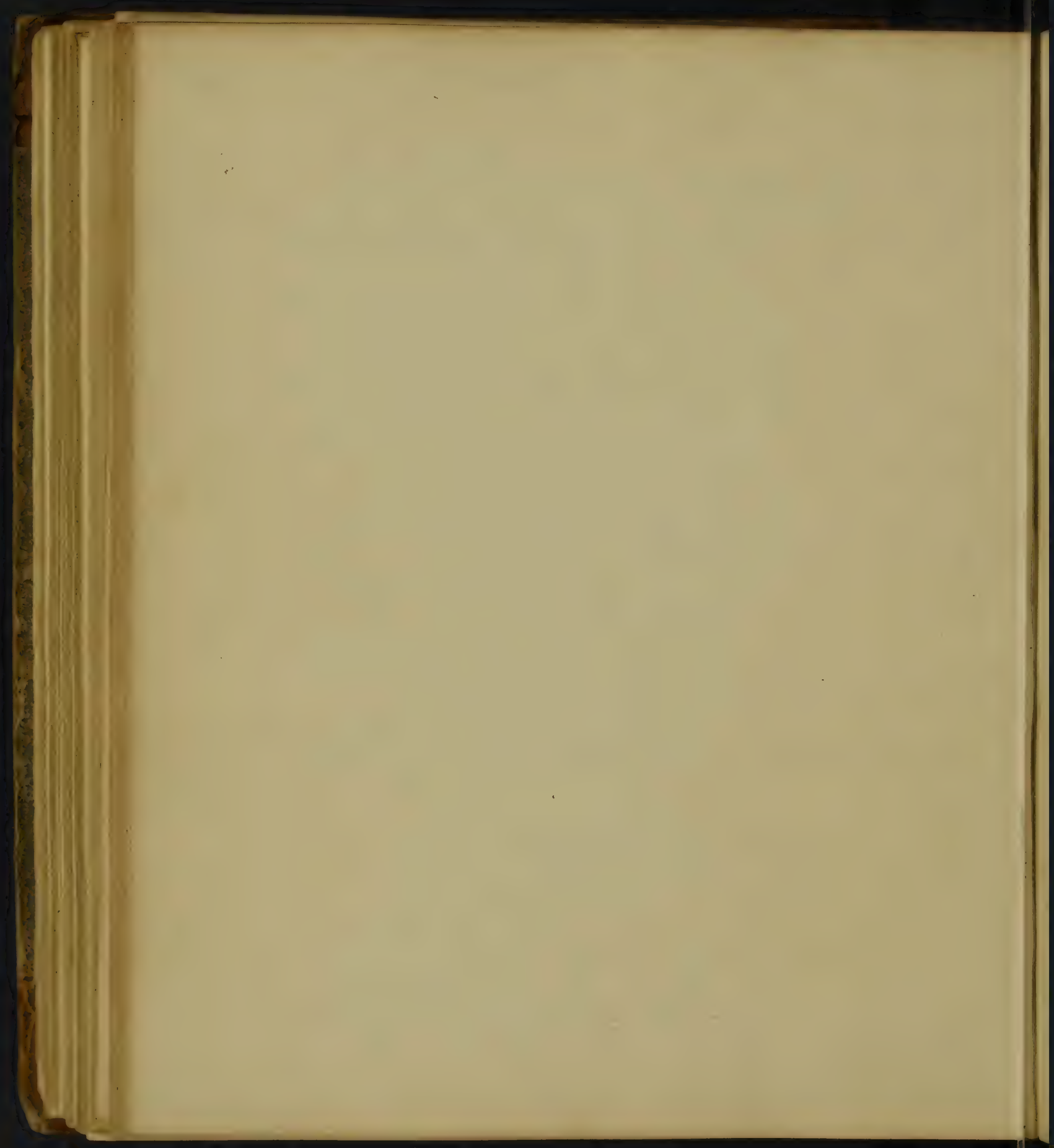


Servants except the general one by common law.
 Any one who lives in a place 6 years without being at any public expense gains a settlement. Stat. Law 240

One that also provides that apprentices or other servants of 15 years of age or upwards with-
 drawing or absconding from their masters service before their term expires shall serve till the time after their original term of service has expired, and if they run away, an apishant, or justice of the peace, or a constable and two of the chief over-
 seers inhabitants of the town where there is no justice may seize men and boats if occasion be, at the masters request and charge, to pursue such servants and apprentices, and bring them back. Stat. Law 487

Mensual Servants.

They are so called because they are domestic servants and generally employed intra muros. It is a general rule of the common law that if no period of time for continuance of service is fixed by the parties, the contract shall be construed



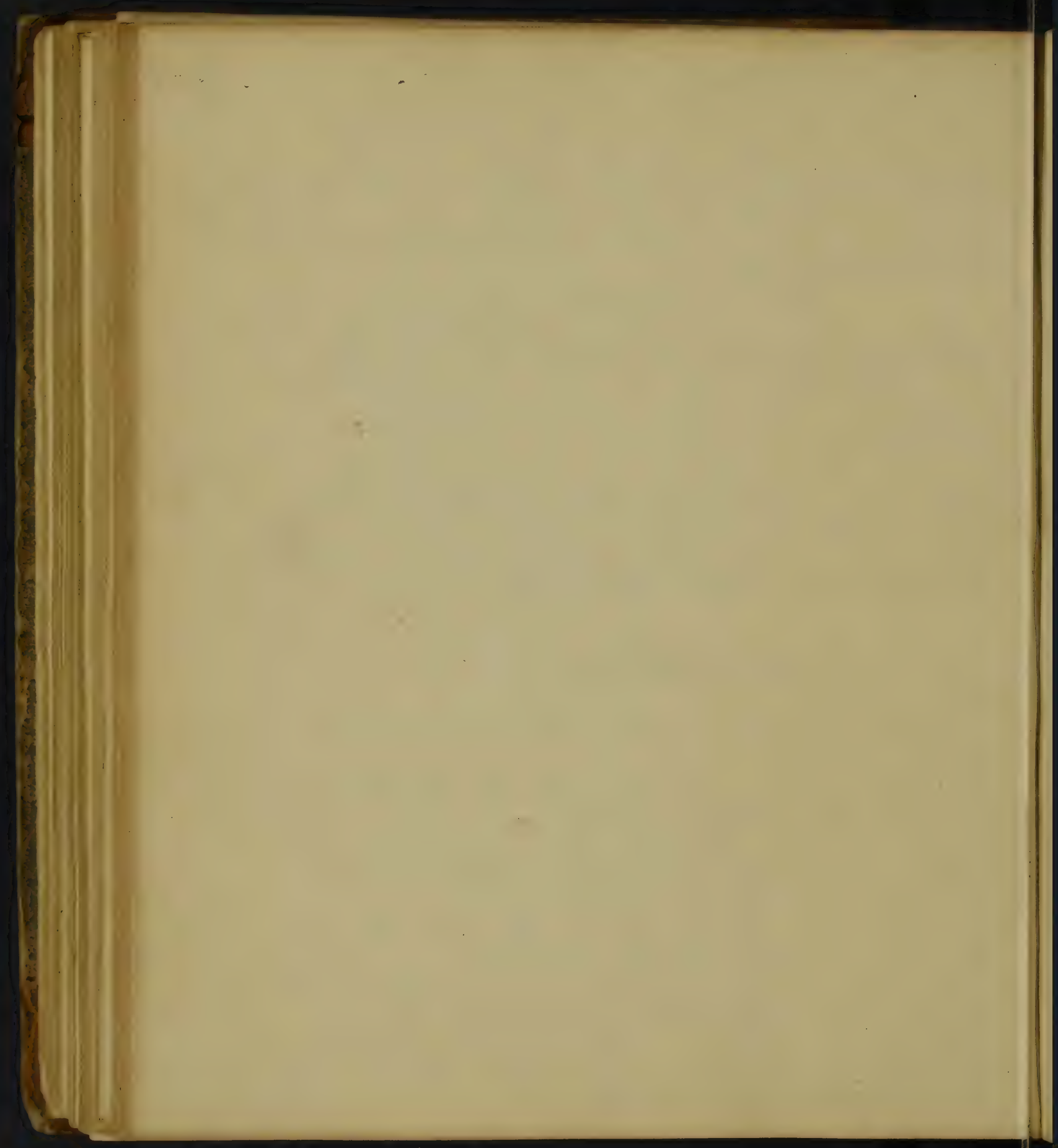
I mean a hiring for a year. His introduction on the
 equitable principle that the Servant has voice and the
 master maintains him throughout all the fluctuations of ^{Vol. 925}
 the respective seasons. ^{3 Dec 196} ^{Filed Feb. 189}

This rule I trust says all you could have
 never been adopted or considered as law in this State.

By the Stat 5 Eliz a menial Servant cannot
 leave the service of his master, nor the master put
 away his Servant either before or at the end of his
 term without a quarter's warning. We have no
 such Stat and therefore the Com Law is our rule.

Day Labourers.

I know of no general rule applicable to this
 species of Servants exclusively says all you could.
 But by Stat 5 Eliz. and 6 Geo. 2. all persons ha-
 ving visible effects may be compelled to work
 at such wages as shall be fixed by the justice of
 the Sessions, and assisting him or her on such as
 either give a more or more wages than are so
 settled - these Statute regulations however are of
 no validity in this country.



5th Agents.

There are various as Doctors, Priests, Clerks, Stewards, Attorneys, Ship masters &c. These however are not servants in the same sense as the preceding are, they are servants only in fact and as effect the property of their masters they are not subject to the personal control of the master. Indeed the employer takes the name of principal and not master, and the servant is usually denominated agent.

B.C.454

Wood 409

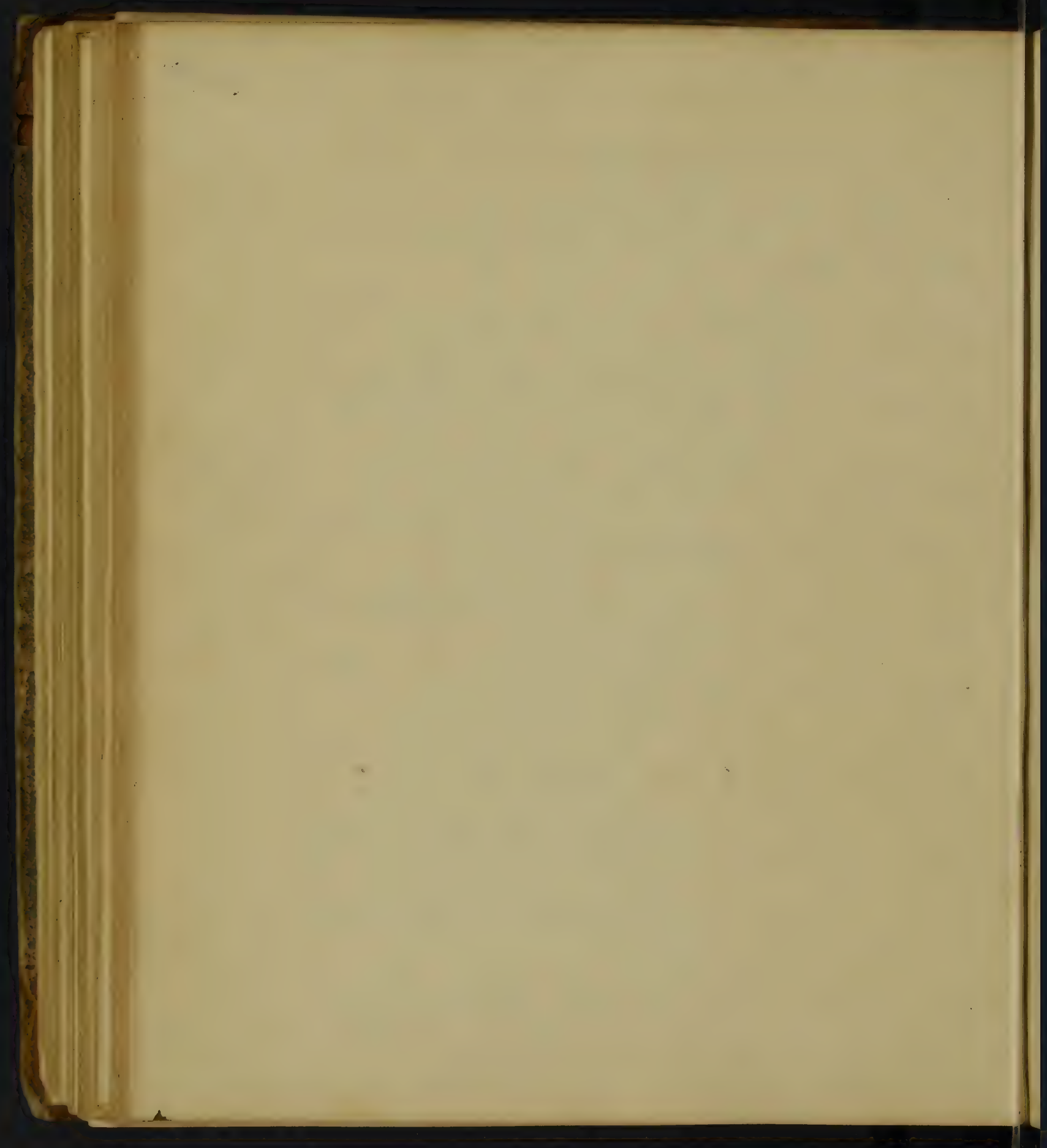
Bent. 252

297.8

as to the rights and duties of these different kinds of agents, it is difficult to lay down any general rules applicable to them all. It may however be laid down as a general rule that they must act for their Principals or masters according to their contracts, and this whether such contract be express or implied. In many duties and rights arise out of the nature of the employment, to which the parties are presumed to have agreed.

Wood 469

All agents must pursue their commissions strictly in their instructions strictly and when this is the case they are never liable for usual



loper. But if they do depart from or exceed their instructions, they are liable for such losses. Wood. 469

A Factor may retain the goods of his principal to satisfy not only a particular but also a general balance in his own favour. The balance which is due for an agency of specific articles, is called a particular balance.

And where there is a balance due for the agency as it respects all goods which have come to his hands in the time of his business, it is called a general balance.

He has a general and a particular lien. Amb. 284, when such goods come into his possession. 1 Am. 493

Thus if he sells goods he has no lien upon the goods sold, but he has a lien upon what remains unsold to that amount, and if he buys goods, he has a particular, specific lien on them. 1 East 335

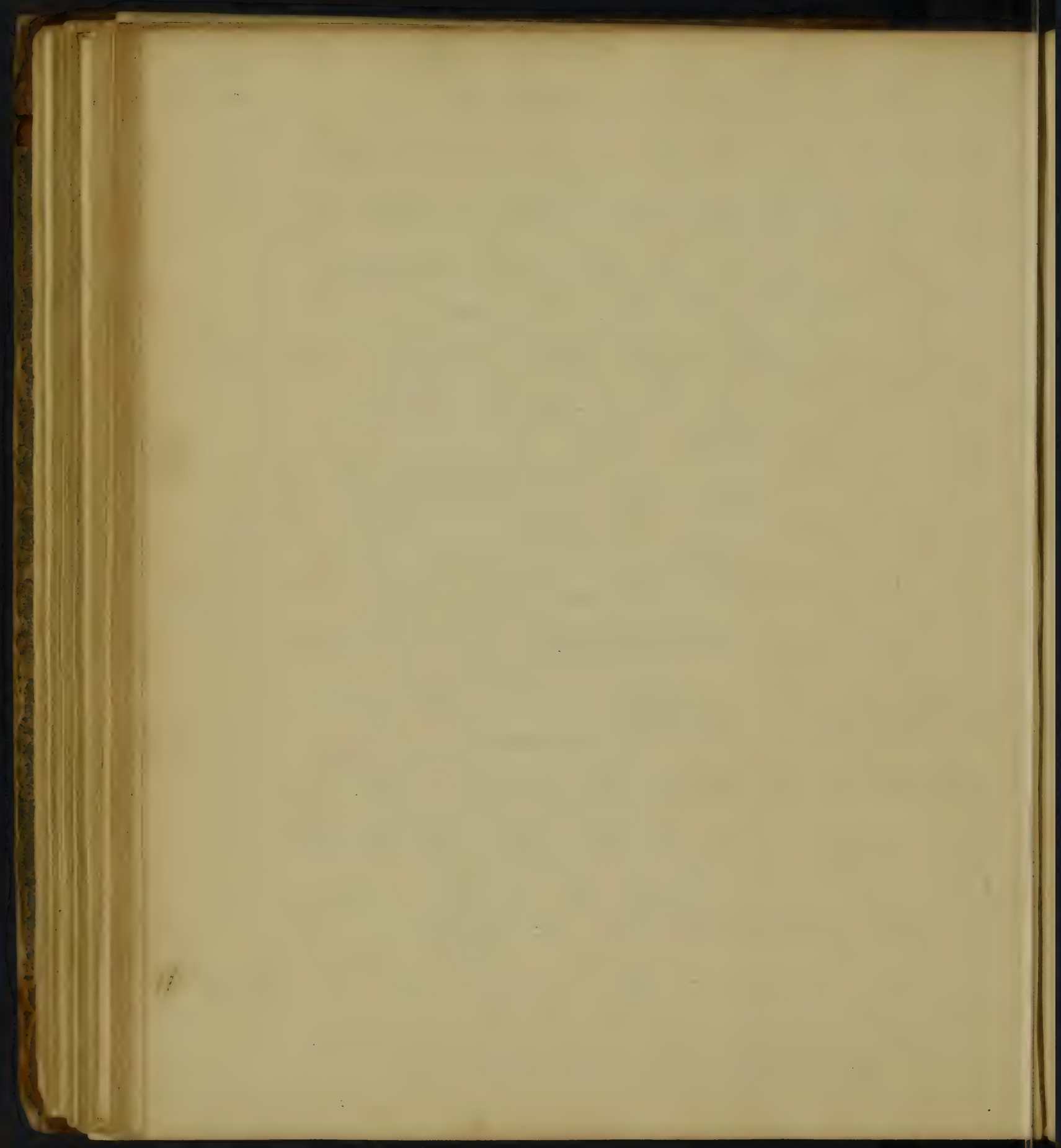
But by giving up the possession he loses his lien, tho' his claim remains - he loses his right of adverse possession which constitutes the lien. 2 B. & A. 1154 - 523

But tho' the Factor has no lien upon the goods sold, yet when he sells goods he has the



same time upon the price of the goods in the hands of the purchaser as on the goods before they were sold. And he may give notice to the purchaser not to pay the principal, but himself for the goods sold, and if after such notice, the purchaser does pay the principal - the factor may recover of the purchaser a second payment. But without such notice payment to the principal will discharge the purchaser. law 241

§ 1 Factor it is said has no lien upon goods not in his actual possession. a constructive possession is a mere right of possession creates no right of lien. Suppose goods are sent to B at Liverpool for the use of C at Chancery - the Factor of C. B cannot hold them as ag't of the principal or of the Factor - for the former may countermand them while in B's possession, and the latter may recover them in trover as being 213 119 constructively in possession. But while the goods remain in the possession of B. the Factor has no



land cannot retain them as against the Principal. They do not become a pledge in the hands of the Factor till he has actual possession. Att. 134
2502117

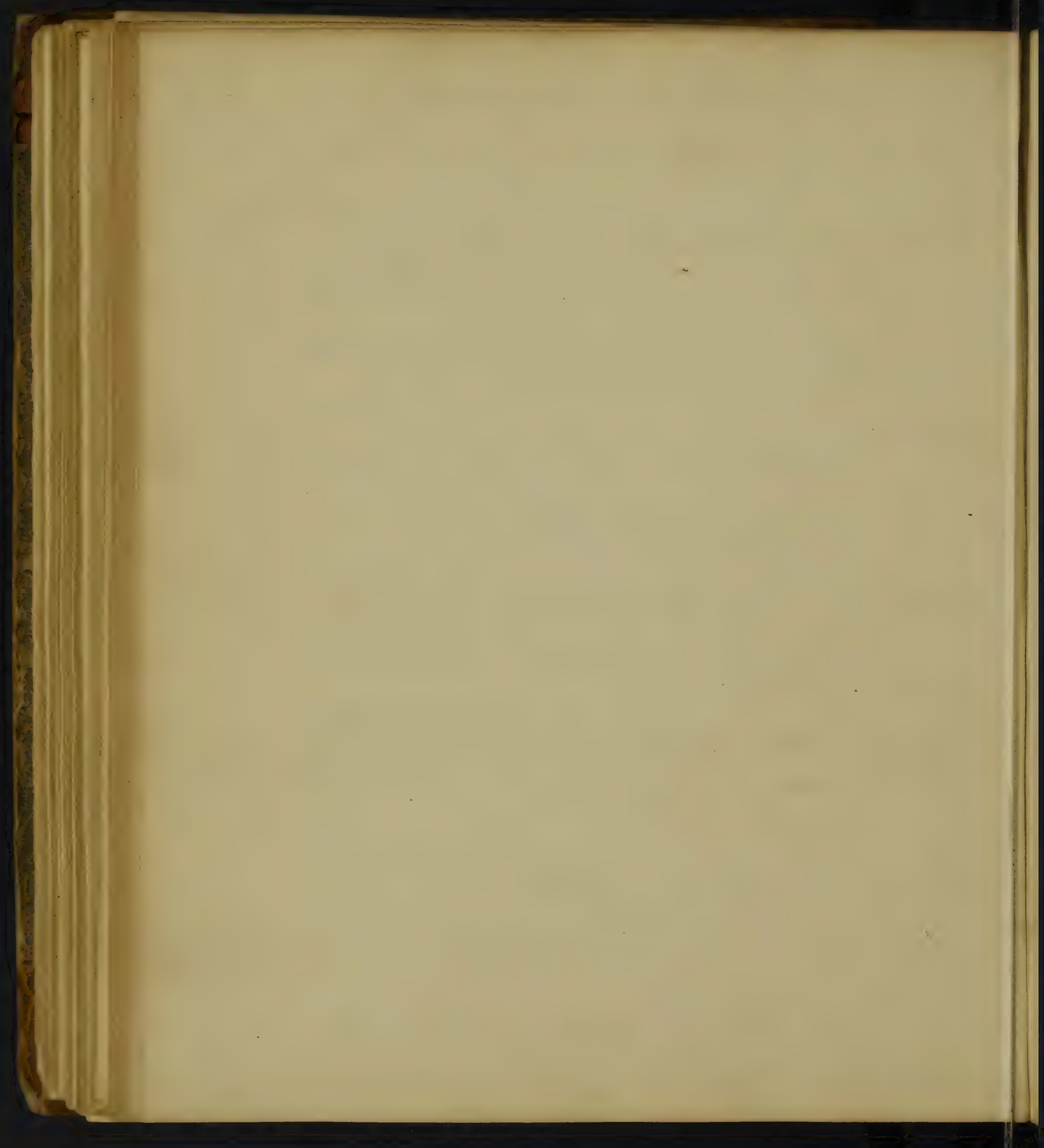
Where the authority given to an agent is discretionary and it appears that the agent has acted reasonably he will not be liable for casualties.

Nothing more is required than the reasonable exercise of that discretion.

But if the instructions are explicit and peremptory - as if such a quantity of goods are to be bought, and at such a price, and the Factor gives a higher price and buys a less quantity, the Principal may disclaim the purchase and turn the goods upon the Factor. 1102.516

So if the price at which the goods are to be sold is fixed in the instructions and the Factor sells for less, the loss will fall on the Factor, and not upon the Principal. 1102.228

A Factor has no right to pawn the goods of his Principal - his business is to buy



Master and Servant. 14

and sell and not to pawn, and if he does pawn them, the principal may claim them of the pawnee, and after demand of the pawnee and tender to the Factor the balance due to him, may have trover against the pawnee.

5 D. R. 604
10 D. R. 648
11 D. R. 1178

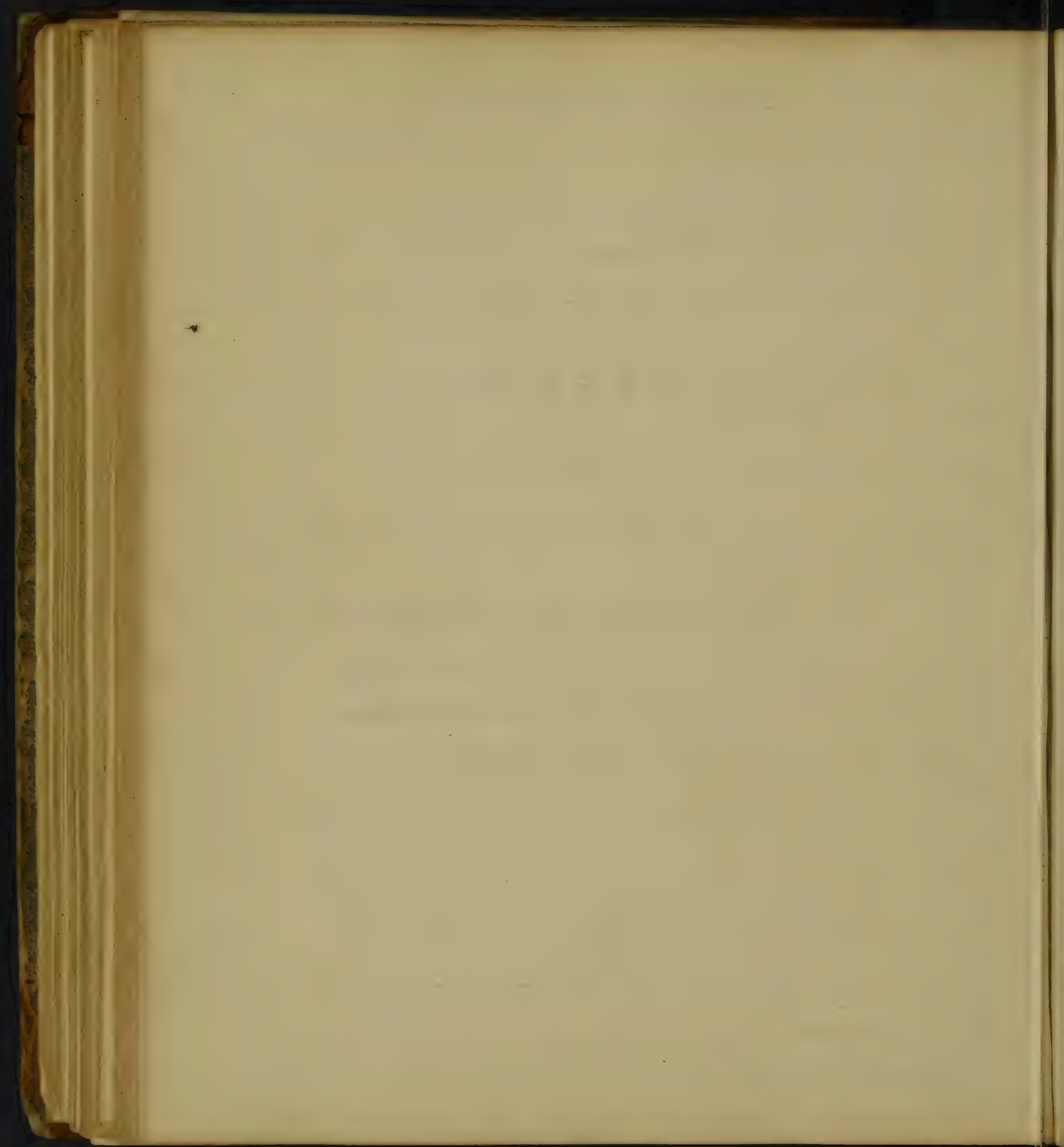
No tender need be made to the pawnee, it must be made to the Factor i.e. if any thing is due to him from the principal, because the Factor in such case has a title - a right of adverse possession as against the principal himself.

1 H. R. 362.

But the Factor may buy and sell the goods of his principal, and this too in his own name.

There is no necessity for the vendor to know whether the vendor acts in capacity of owner or Factor he may buy and sell one and be sued in his own name.

This says Mr. Gould is a rule not in conformity to the general principles of master and servant, and the reason of this exception is that Factors are generally foreign agents and being in a different country, from their principals, great inconveniences, delays &c. would be occasioned, by



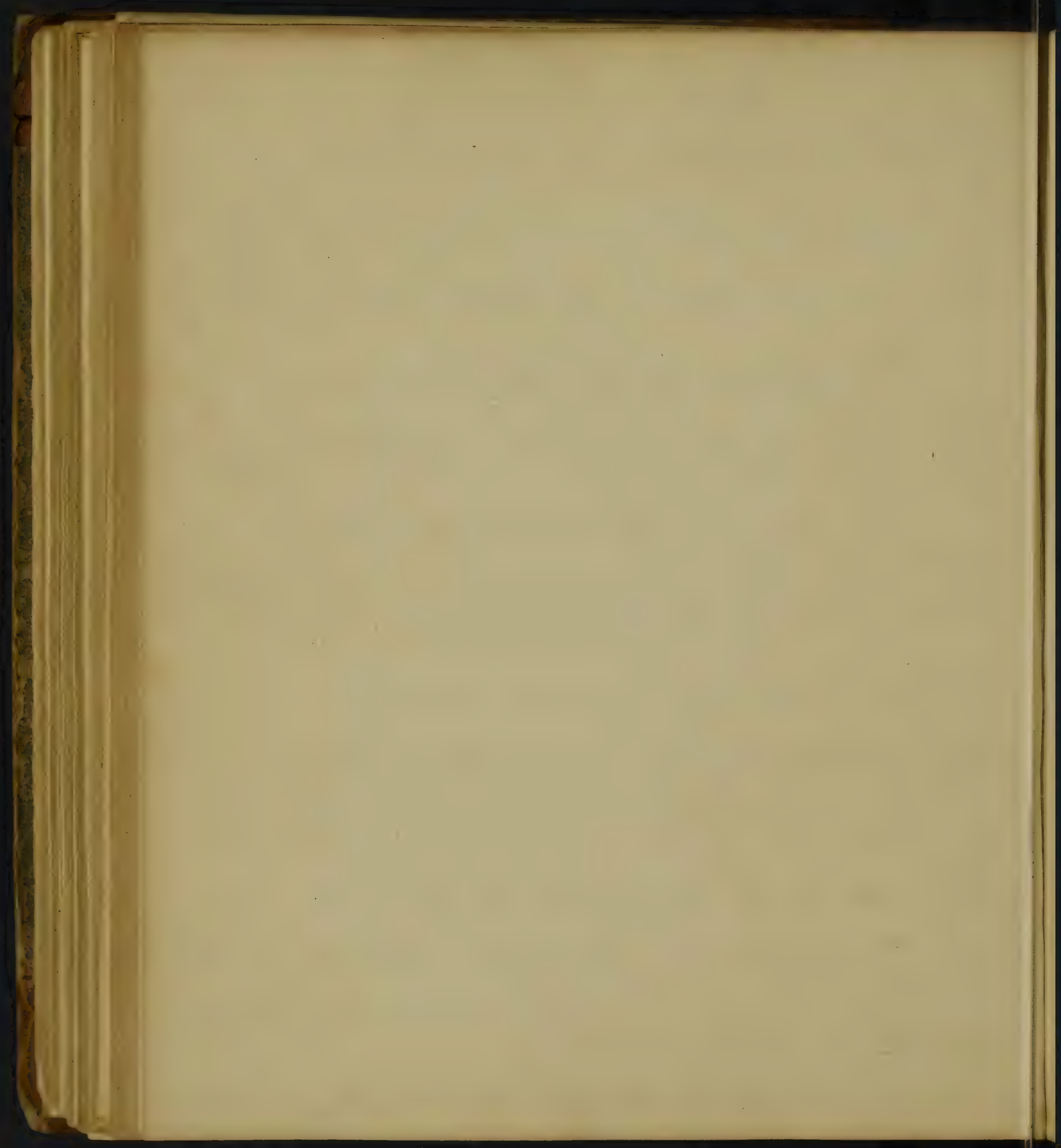
prohibiting them from trading in their own name,
his principal is not supposed to be known he may
act as Factor for 50 merchants in as many dif- Ward. 362
ferent countries; and so is the custom of mer- Lew. 256
cantile men. 72. R. 359
Bridg. 139

From the mere fact that the factor may make
a contract in his own name arises his right to sue
and be sued in his own name. 17 W. 2. 81

As it is of an auctioneer, and this also it may
be known in a particular instance that he sells 2 H. 2. 159
for an individual he actually sells in his own Lew. 256
name.

If a factor sells, or lets than his instructions
authorize him, he is liable for the top. But his
otherwise with an auctioneer where he sells to the
highest bidder - for he is not liable for the top
tho he sells for less than his instructions authorized,
and the reason of this is that there is an implied
contract on the part of the owner of the goods that Lew. 495
they shall go to the highest bidder. 256

If however the owner directed the



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auctioneer not to set them up to the highest bid -
 - He under a certain price, he is bound by them and
 liable for the loss - Thus if the owner in giving
 the auctioneer directions for selling a hoghead of
 rum - tells him not to put it up for less than
 one dollar per gallon, and he puts it up for less
 and sells it for less he is liable for the loss.

Of this Class of Servants are Attorneys.

An attorney has a lien upon the papers and
 indg^{mt} of his client for his fees, and he may di-
 - rect the adverse party against whom indg^{mt}
 is given to pay the costs to him and not to his
 client - But at Com law the attorney has a
 lien for nothing but for his costs i.e. his taxable
 fees.

A distinction is taken in Eng^d between Counsel-
 - lers and Attorneys. Attorneys have a lien for
 their taxable fees, but an Attorney Counselor
 have no lien for their taxable fees. But an At-
 - torney holds his lien subject to any equitable claim.



Master and Servant

of the adverse party.

Thus A recovers 50 Dols of B, the Attorney of A has taxable fees to that amount, he directs A to pay him the amount and not his client. But suppose A, who recovers is insolvent, and B, has a claim at costs to the same amount against A in a former suit - here the court will direct, or at least the parties will be entitled to a stop, and therefore the Attorney's fees is nothing.

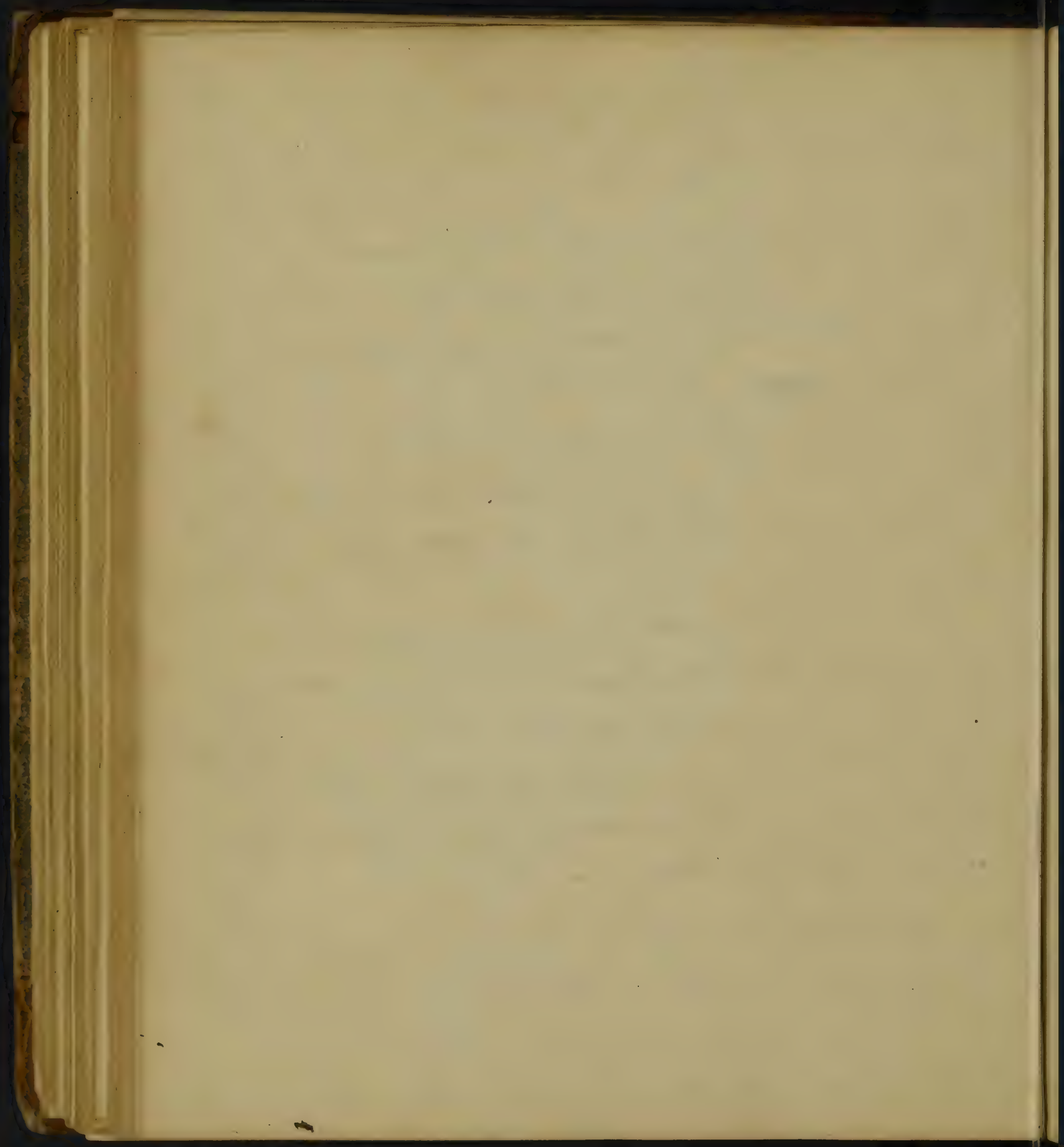
1 Hen. B. 24
- 122
- 217
659
2 do 110
- 587
1 East 4164
14 J. R. 123
6 Dr 361
1136

An attorney who executes an instrument for his principal should do it in the name of the principal and not in his own name. If he execute it in his own name, he binds himself and not his principal. - The signature should be this -

8 J. R. 570
9 do 76
2 East 1412
6 J. R. 177
Chitty 74
2 J. 56, 75
1 Hen 705
9 do 5
12 J. R. 181

A. B. by W. D. his attorney, or &c. for A. B.

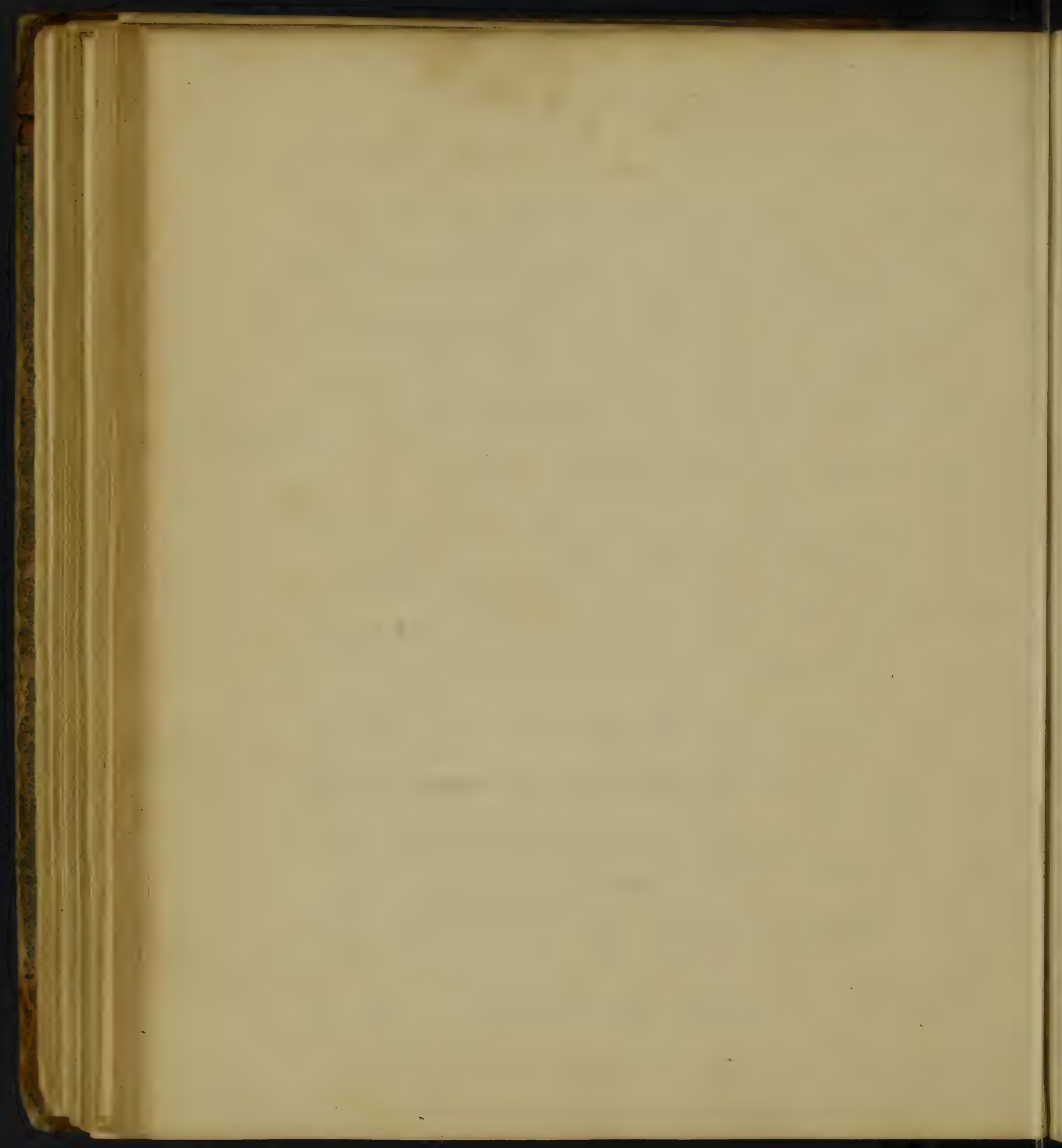
An agent it is said cannot bind his principal, by any deed executed as agent unless his authority be created by deed. I do not know says Ch. Gould as I understand the reason of this rule.



The agent may in many cases bind his principal by acting in pursuance of a mere verbal authority - Thus he may bind his principal by a verbal promise. Suppose the agent sells a horse, which he may do by virtue of a verbal authority, and makes out a deed of sale, ^{23. R 202.9} which is necessary - will not this bind the principal. ^{11 Ed. 313}
 If the rule be construed strictly it cannot. ^{10m 8. 447}
^{11m 6. 1. 57}

However this is not to be confounded with another rule, and that is - If A in the presence of B, be directed by B to sign such an instrument, with B's name and A, does it in his presence B is bound by it - A does not in this case sign it as Attorney - The instrument does not import such ~~work~~ signing - it is the same as if B had signed it himself. The principal sometimes makes a mark and his name is affixed to it by another. See Crim. Law title Forgery.

An agent for the public acting in a public or private capacity, but contracting for the public is not liable personally on such contract. The



Chancellor of the Exchequer in England is never liable personally for any loan for the public. The Comptroller of the Army and so is not liable personally for the provision purchased for such army.

12 R. 172

674

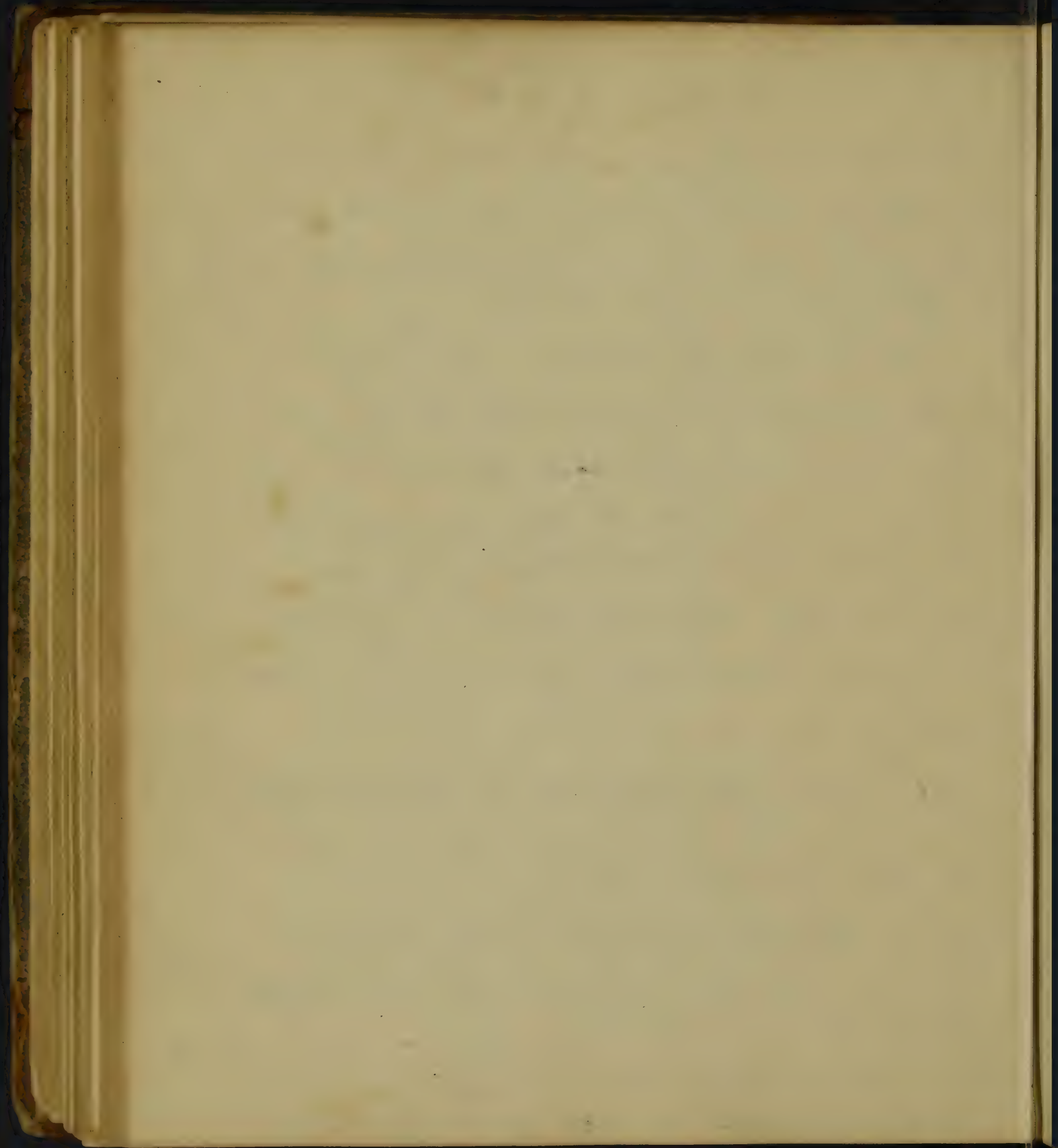
1 Inst. 582

12 Inst. 59

This point has been decided in the U. States in a case against Dexter who was then Secretary of war. He took a lease of a house from a woman for the war department. The lease contained covenants &c. as usual. But it appeared on the face of the lease that it was for the use of government; tho it was signed by him in his private capacity &c.

6. Debtors assigned in service under our Stat. — This species of servant is unknown to the com. law our Stat provides that a debtor committed on Execution and no other means can be found to pay the debt for which he was imprisoned — the debtor shall satisfy the same by service if the creditor requires it, and the Superior or county court shall judge it reasonable. When an application is made by the Off. for an

Hallen 58

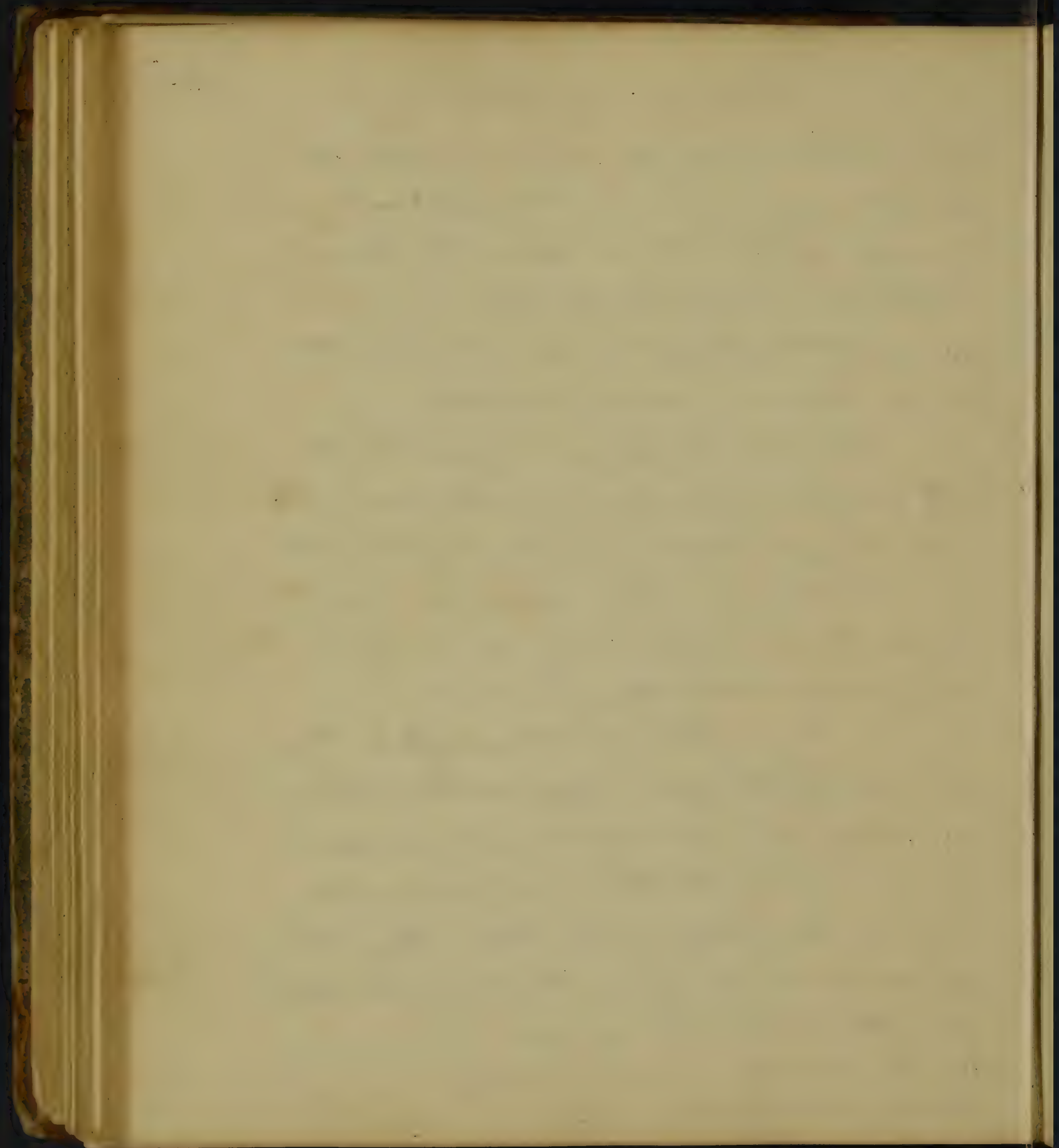


a judgment in service, the court will look back upon the original cause of action and to make such application effectual it must appear that the debt was fair and bona fide and equitable as well as legal, and if this does not appear to have been the case an assignment will not be ordered.

Sometimes the assignment is made to the debtor himself, and sometimes to another person it must always be to some inhabitant of this State.

It is to be for a determinate period of time, like the price of labour estimated by the court will amount to the debt, costs, and interest.

It is a species of apprenticeship, they are bound by ^{order of} the court - Assignment in service may, Mr Gould is now very unusual our courts have generally reacted themselves of every appearance for rejecting applications. They take into consideration the age of the debtor his state of health his domestic relations his character and the reputation he sustains among his neighbours and says Mr Gould I recollect at only one



instance where the application was effectual.

Where the debtor is much indebted to others, an assignment in service may impede or prevent satisfaction for their debts, and therefore this is a reasonable cause for refusing assignment.

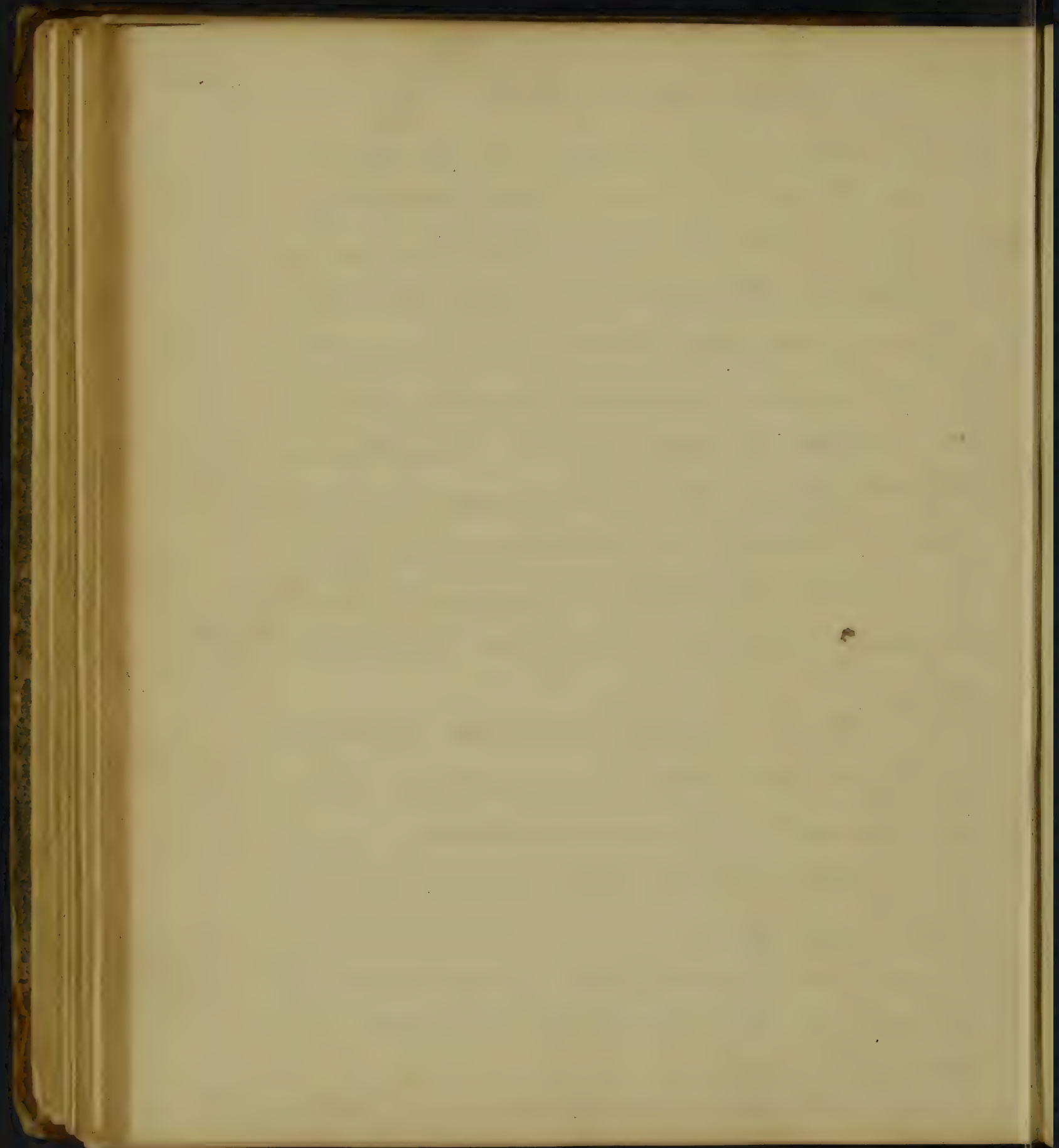
But when an assignment is made it never can be made to a man and his heirs, because the authority of the master to whom he is assigned is personal i.e. confined to his person, as in confidence. And for the same reason he cannot be assigned to one and his Executors & assigns, or ^{his} assigns.

Now far as to the several classes of servants under the Poor laws and our own, and the general rules applicable to each class exclusively.

But these are rules applicable to Masters and Servants generally.

1. When the master is bound, as to third persons, by the acts of his servant, and when he can take advantage of such acts.

The general principle that lies at the foundation



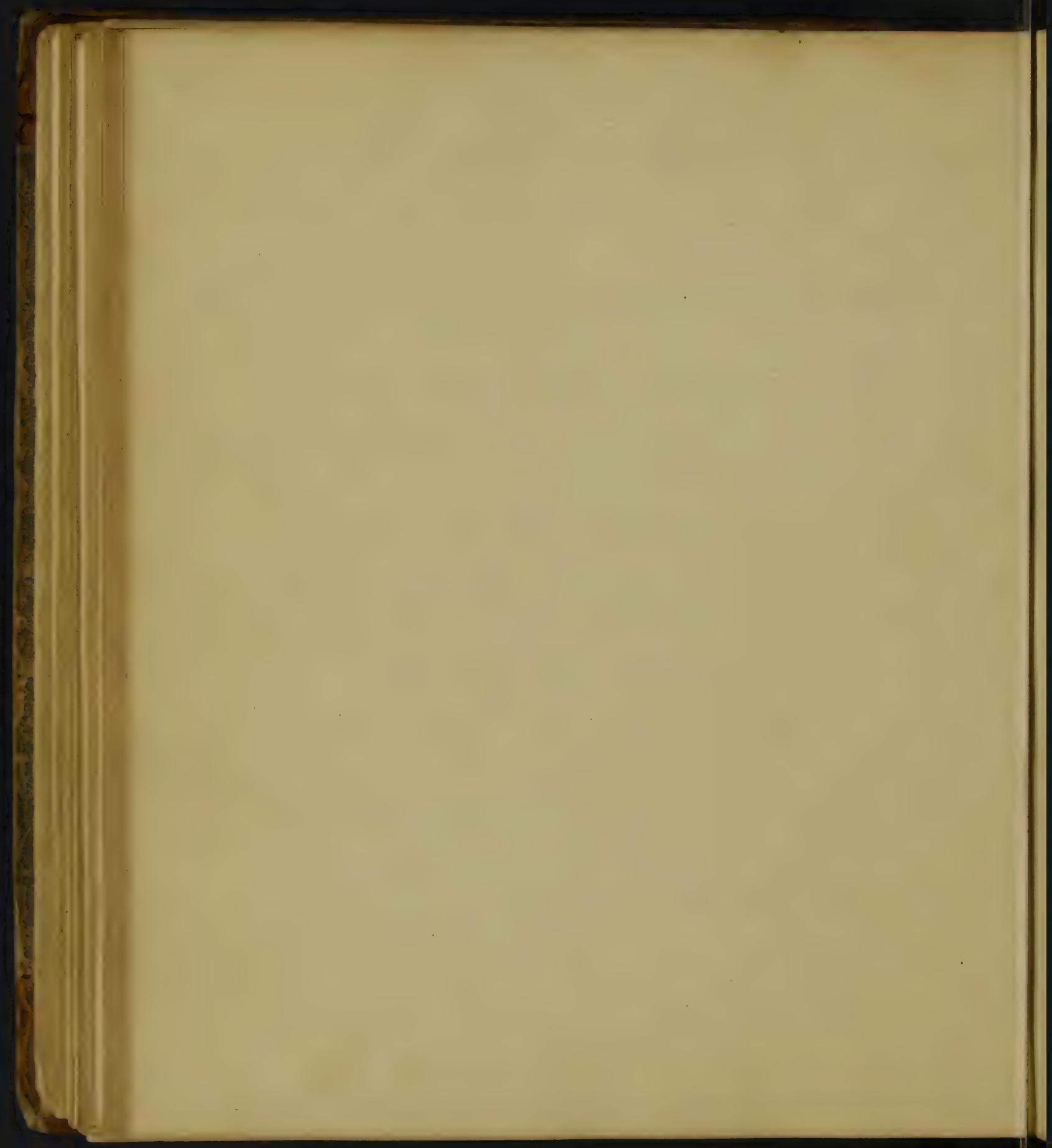
Master and Servant. 18.

of all the law on this subject is that those acts of the
 Servant which are done by the master's command
 either express or implied are in contemplation of law the
 acts of the master, for the master is guilty of the act
 tantum.

It is regularly true that all acts done by the
 servant in the performance of his master's business
 are done by his implied command.

Indeed there are three classes of acts done by
 the Servant which are accounted the acts of the mas-
 ter - first whatever the Servant does at the express
 command of the master - secondly - whatever
 the master expressly permits his Servant to do in
 any particular case - and thirdly whatever the
 master permits his Servant to do within the scope
 of a general authority of the master. All these
 are deemed to be the acts of the master and may
 be exemplified by cases.

All contracts made with the Servant as
 such i.e. having authority conferred are in
 legal contemplation made with the master himself,



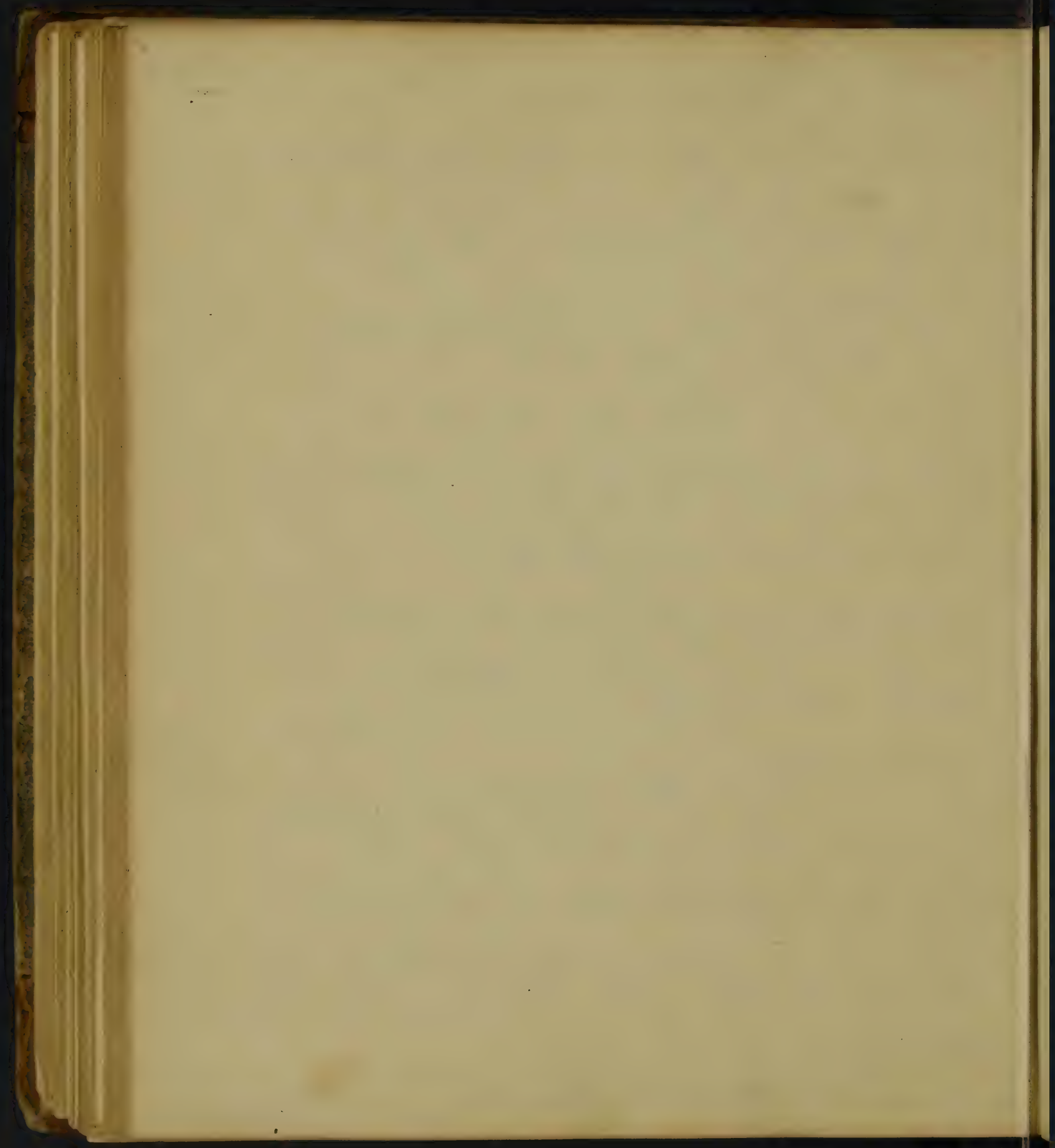
Master and Servant

and it makes no difference whether the contract was made with the express command, express permission, or within the scope of the agent's authority, by the master.

If a butler goes on a particular occasion to buy a horse for him, and in his name, it is an express command. If a Servant wishes to buy a horse for his "old man" and it says to him "you may if you please" it is an express permission - and if the contract is such as the Servant usually makes in pursuance of the business in which he is employed - it is within the scope of a general authority - there is no express command or express permission to be given.

As if a Clerk of a Store purchases produce or sells goods &c. in either of these cases the contract may be declared on, or pleaded precisely as if the master himself had actually made the contract without the intervention of a ^{3d} party.

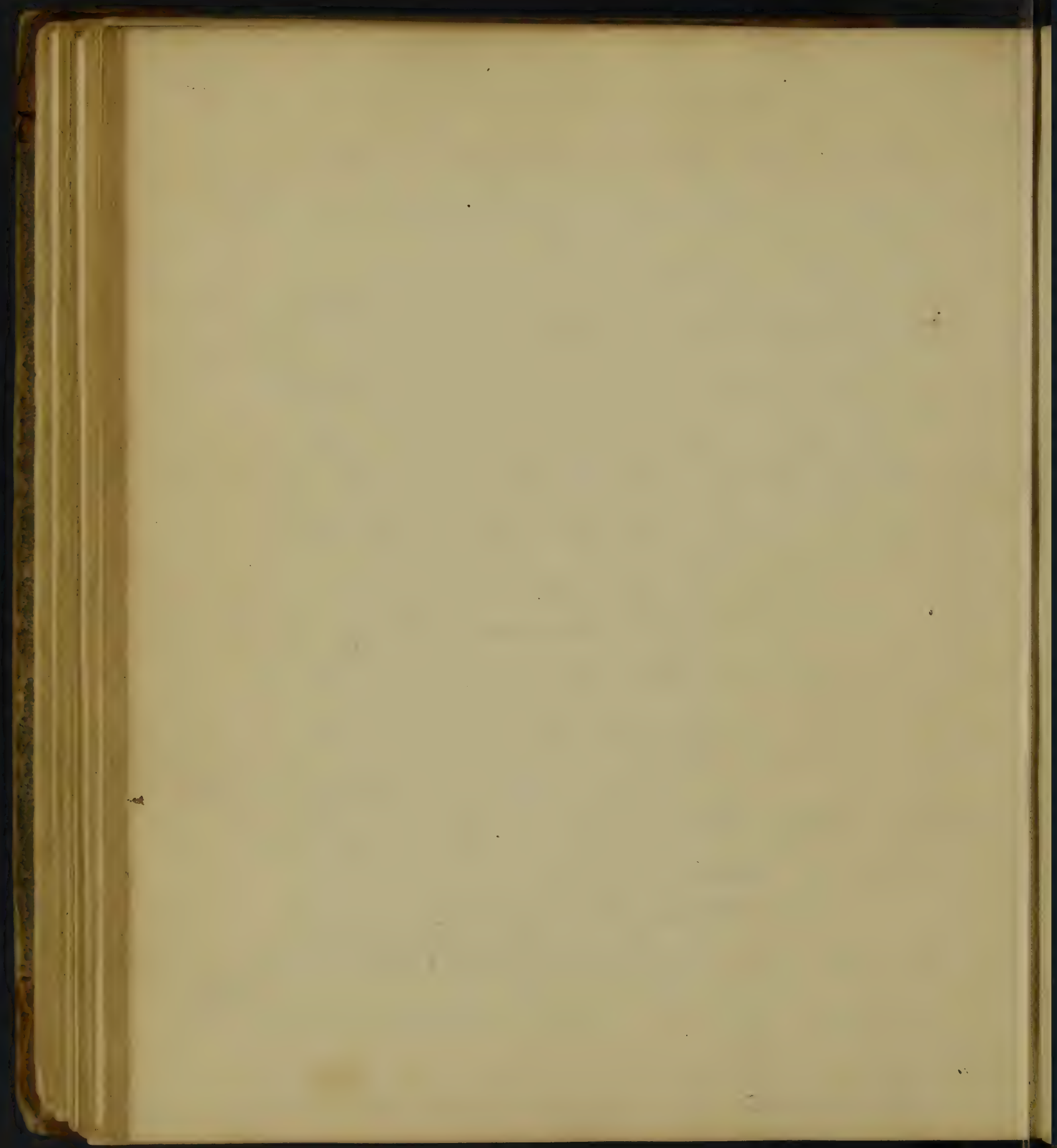
There is no need of mentioning the Servant



in such case if a servant is charged with his master's property, the master may sue the servant for it and recover. ref 225
10449

The acts of the servant are the acts of the master. If the servant is robbed of his master's property, the master may sue the husband upon the Stat. of Trayning, and if the master is absent at the time of the robbery, either the master or the servant may sue the thieves but not both, and the reason why the servant himself may sue is, his wife because he is liable over to the master. It may be true in many cases that the servant is liable over to the master, yet says Mr. Justice, he is not liable in all cases - he is not liable in the case of robbery, unless by his own neglect or wilful misconduct, the goods &c are exposed.

But the true ground of his right of action is that the property by virtue of the Prailment is Salk 613
3 mod 259 his as against all persons whatever except his master or co-tenant. A bare possession gives him such a qualified possession to the property against all others that



he may recover them when taken away.

4 Inst. 303

11 Mod. 8.

But when the master is present at the time of the robbery, the goods are deemed to be in the possession of the master, tho' they are taken from the Servant, and therefore the Servant can have no action for them.

19 Mod. 54

Salk. 615

1 Hawk. 148

But a recovery against the hundred by the master bars the Servant of his action, and a recovery by the Servant bars the master and a mere commencement of the action by one may be pleaded in abatement to an action by the other. And the same rule applies in case of goods taken by a mere wrong doer.

Carth. 145

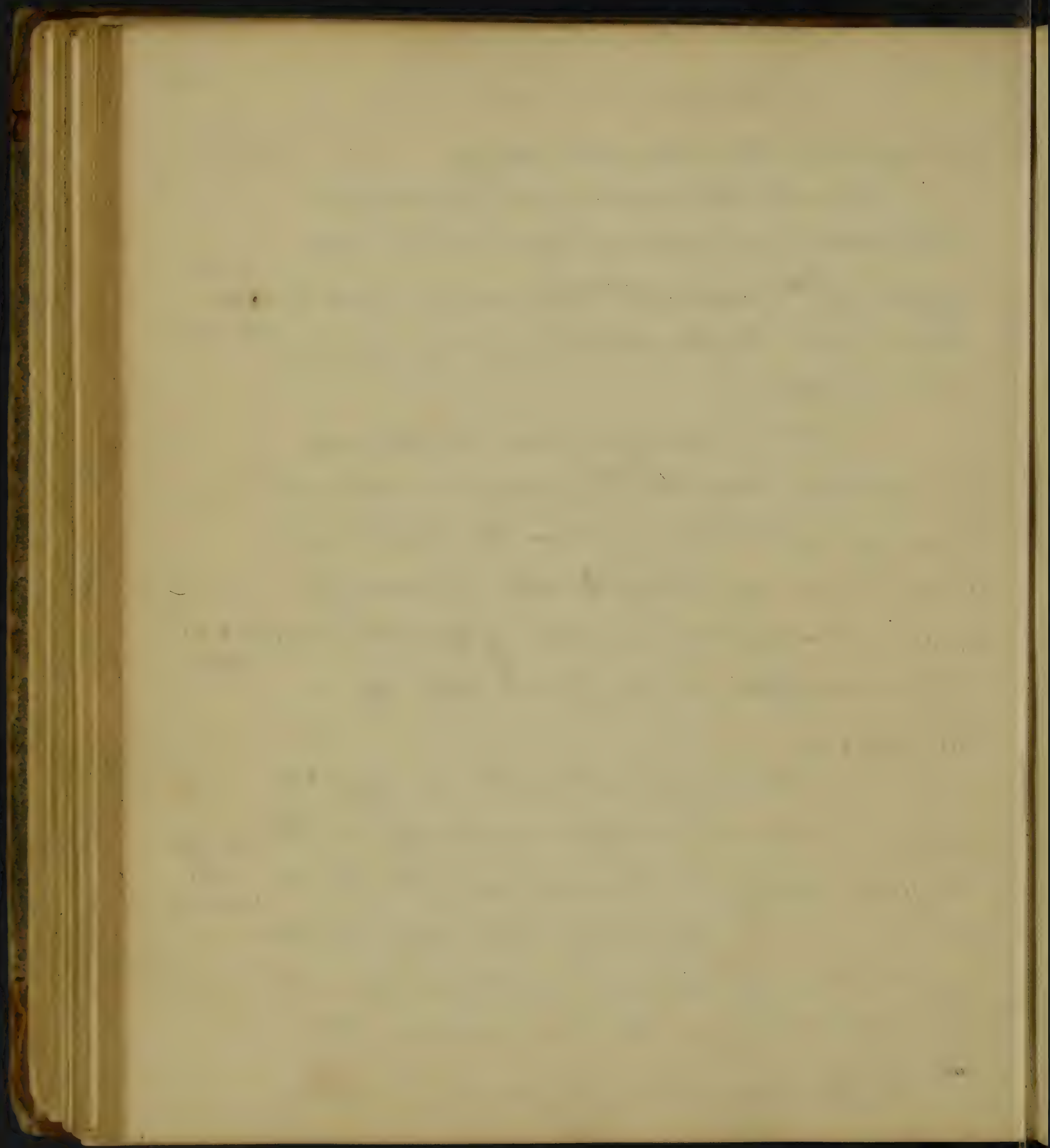
Lect. 127

When the Servant in such case brings his action he declares on a possession by himself as of his own goods, precisely as the master would if he should sue. This is a rule of pleading, but nothing furnishes so good evidence of law as a rule of pleading, and hence pleading is by 20 Coke termed the key of the law. If the money of the master be gained from

2 Rand. 79

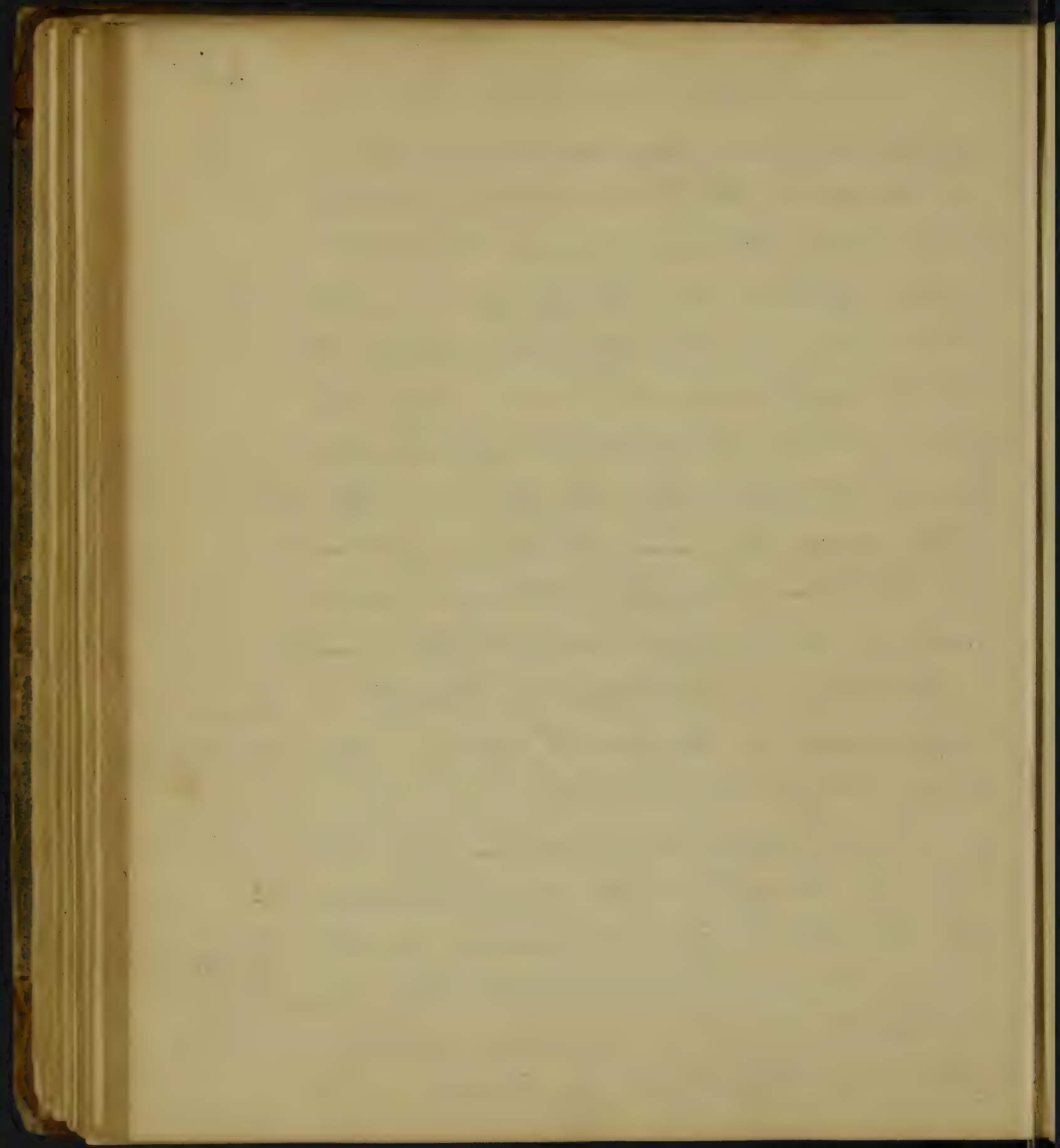
397

3 Mod. 259



The Servant by any illegal contract, the master can recover it in the same manner as if it were so gained from the master himself. But if the Servant squanders away his master's money, there being no fraud or illegality in the contract: the master cannot recover it, but his remedy lies against his Servant, all this proceeds upon the ground that the acts of the Servant are the acts of the master, for if money be obtained of the master himself by fraud or illegality, he may in general, recover it. But if he squanders away his own money on the other part, without fraud or illegality he cannot recover it. It is not to judge as to what is squandering and what not. 3 Bac. 359 1 B. & C. 430

If an Innkeeper's servant robs his guest the Innkeeper himself is liable. And if the Servant sells bad wine or liquor the master is liable, &c. 9 Co. 32
 Dye. 266
 1 B. & C. 430
 1 Rolle 95
 2 Bac. 95
 3 Co. 16
 he says the servant is not liable tho he knows the liquor to be bad and unwholesome, and the reason assigned is, because he acts as Servant.



Master and Servant.

This rule (page 411 Gould) seems to me very questionable. I confess I feel better satisfied with the rule than the reason assigned for it. The rule, I think is incorrect. Suppose the Innkeeper command his servant to put arsenic or other deadly poison into his guest's liquor - or suppose the servant should do it voluntarily, and death should ensue, the servant would undoubtedly be guilty of murder.

To also if he should induce one slow poison calculated to injure the health of the guest, it would seem that he must a fortiori be liable civiliter.

1 with 328.

But if it is wrong, and wilfully done, for when one person has no legal right to do a given act, another doing it at his command, is as guilty as if he himself had done it.

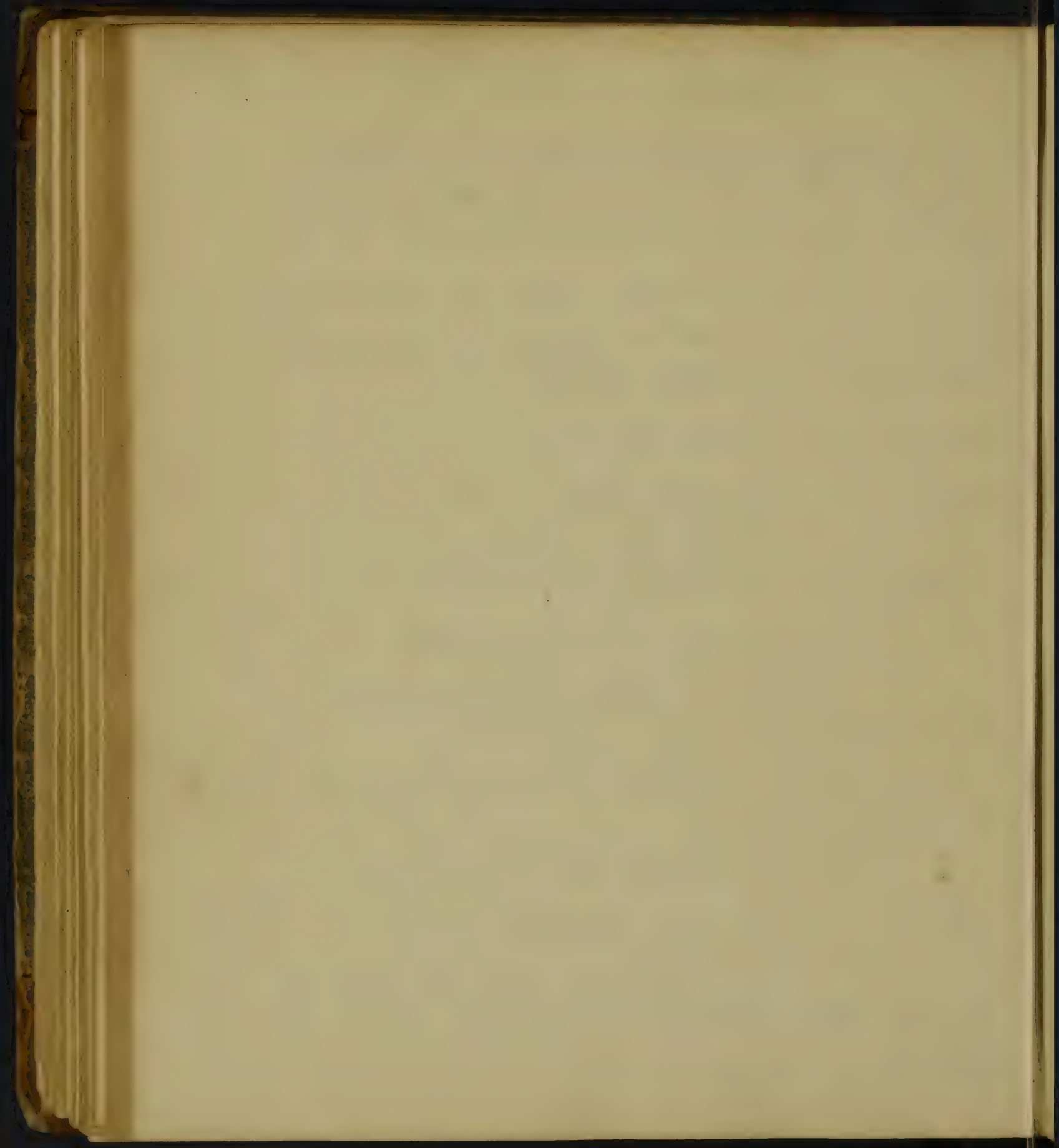
360-5-613

12.14.430

The servant is bound to obey such commands of his master only as are lawful and honest.

6/12/590
154

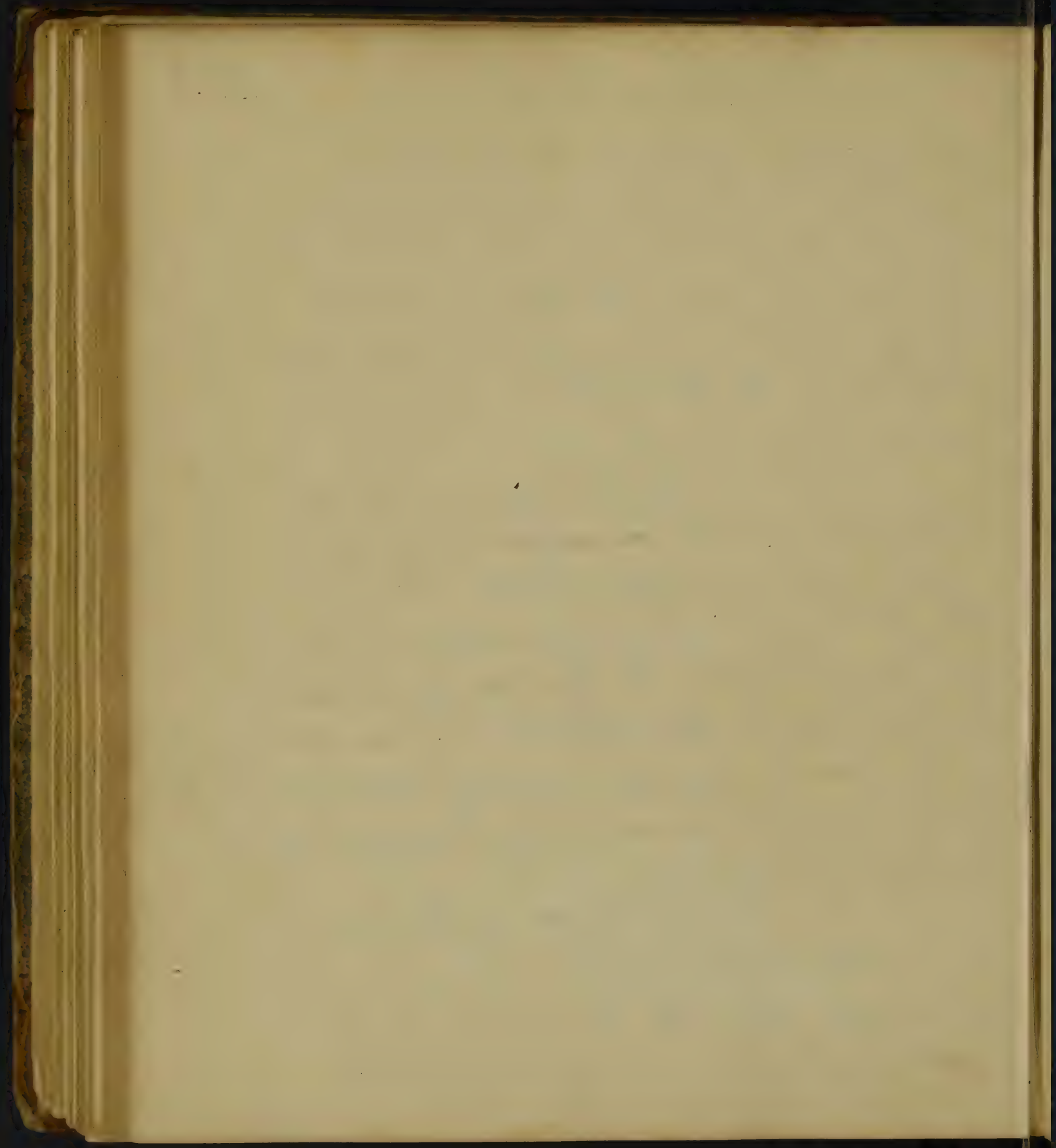
Suppose the clerk of a store represents the quality of goods different from what they are. The prevailing opinion I know is that he does no more than his duty, to lie for his principal, and that he is



guilty of no wrong, but yet this does not alter the principle of law. Suppose J. S. commands his servant to cut down trees, burn his neighbor's house &c. if the servant knows that they are not the property of his master, he is not bound by the command, the law does not consider him as bound, and hence he is liable.

But it is said if the servant in obedience to his master's command, does ~~not~~ act a wrong of which he the servant is ignorant, he is not liable. Thus if the master wishes falsely to imprison another, locks him up, and gives the key to the servant, who is ignorant of the false imprisonment - the servant is not liable. he being the involuntary instrument of his master's vengeance, and does an act which in itself is lawful.

But suppose the act done by the servant to be in itself unlawful, or inconsistent with what the law deems good. Then the servant is liable whether he knew the act to be wrong or not.

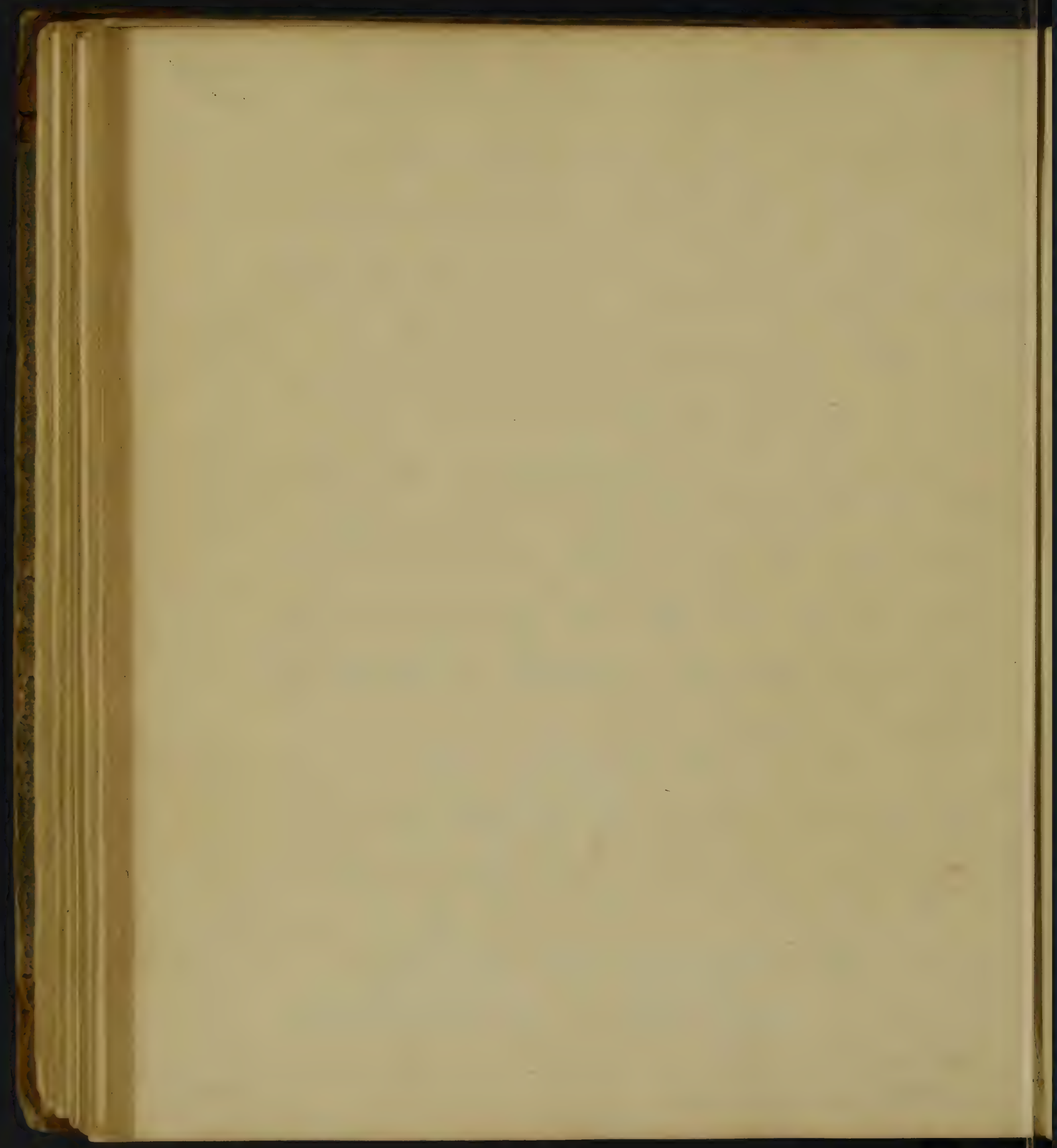


Thus suppose A commands his servant to cut down a grove of trees, tho' the Servant does not know that it belongs to B, still he is liable - the law of trespass does not regard the intention, but the injury. 2 R. 257th

Those acts of the Servant not done by the master's command either express or implied are not regularly deemed the acts of the master. When therefore the Servant acts without the master's command either express or implied i.e. not in the discharge of any authority or business with which he is generally or specially intrusted by the master, he is liable.

The acts of the Servant in such case are not the acts of the master, and hence the master is not liable. Thus if the Servant leaves his work in the field goes and beats another, the Servant and not the master is liable for the battery. 3 Will 232
3 B. & 438
5 T. R. 578
Skinner 228

And so it is if the Servant without express authority, enters into a contract not in the discharge of his master's business. 3 B. & 438



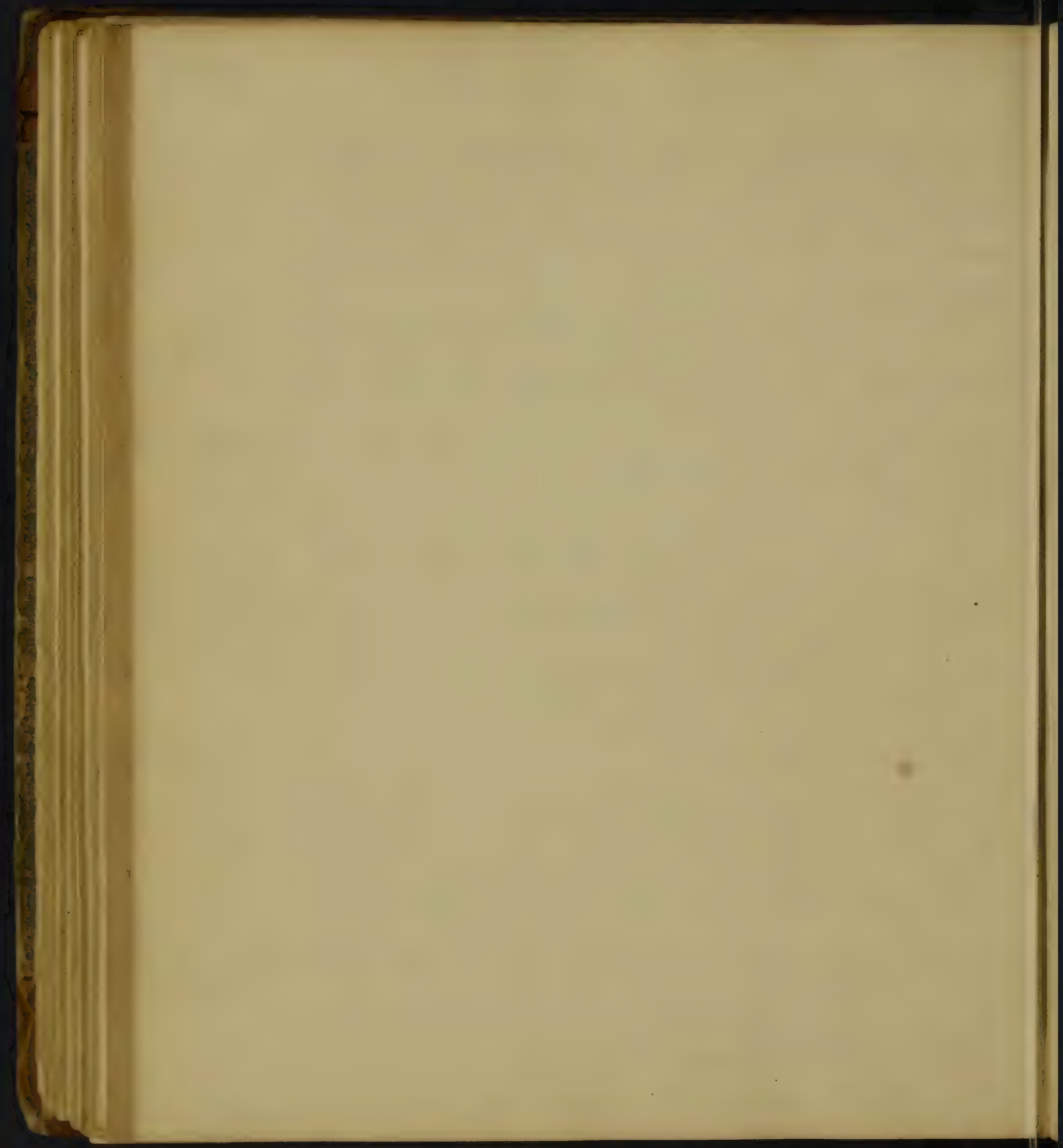
But if in such case the master affords a pen to the contract, it is binding upon him, and this is no exception to the general rule, because it is now the master's personal contract.

It has been recently decided in England that if the Servant while actually in the performance of his master's business commits a wilful injury upon another, the master is not liable. (Carl 106)

The case was the Servant wilfully drove his master's carriage against that of another. The action was brought against the master and it was held not to lie. And the reason why the master is not liable is, that the act done is not in furtherance or pursuance of his master's business. (Bar 8, 472)

When this case was first decided it was thought to be a novel doctrine. I was of opinion (says Mr Gould) when I first saw the case that it was opposed to principle, but I am now abundantly satisfied that the principle recognized in this case is correct. (W. 115)

But mark the difference between this and another case. If a Servant in the performance of his master's



business commits an injury upon an other through negligence, or want of skill, the master is liable.

Thus if a Servant for want of skill in driving a carriage, or carelessly turns his head the other way when he goes by, hits another carriage and injures it, the master is liable.

21. R. 144

300 762

100 406

The master is bound to employ for to third persons' skillful Servants - but he is not the insurer against the malicious and wantonly, rapacious of his Servant. - Such acts of the Servant are his own voluntary acts - suppose the Servant as he passes by another's carriage, throws from his master's carriage a wickedly stone with such projectile force as to injure the carriage or any person in it. Well may we suppose the Servant is not liable. The law does not admit the idea, but how can this case be distinguished from his driving his master's carriage intentionally, and violently, against that of another man. All the difference in the case is that in one case the Horse is the instrument he

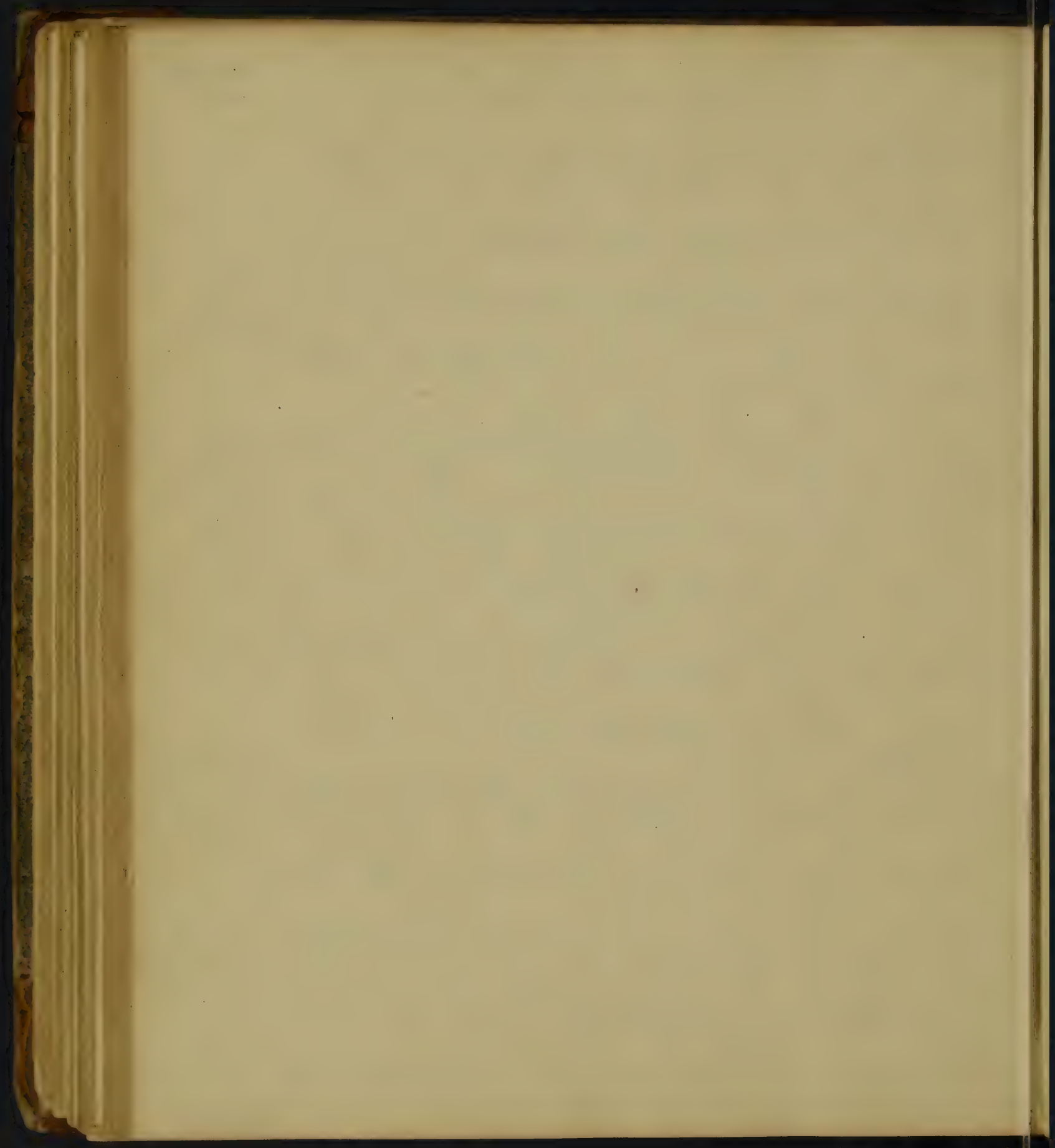
18. R. 106

27. R. 1442

67. R. 125

5. R. 619

18. R. 131



makes use of, and in the other, his master's carriage. It is as exclusively the act of the Servant, as in the former case.

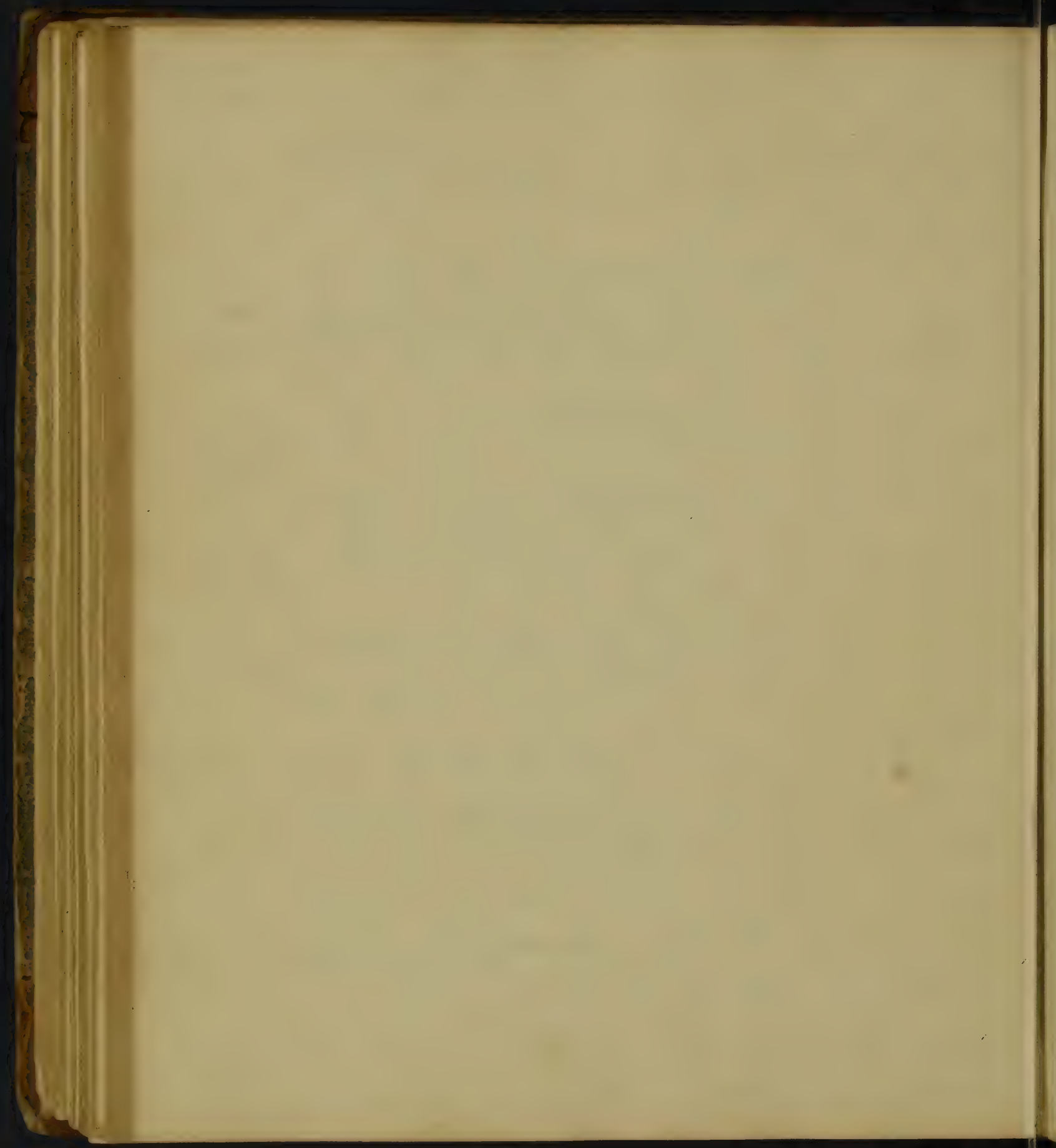
A carters servant negligently drove his master's cart against the cart of another and bidge a pile of sack - the master was held to be liable. 10th 1841
5 B. & P. 799

A servant drove his master's cart over a layby the master was held to be liable. 10th 1841
1000 465.
5 B. & P. 62.

A Surgeon apprentice through negligence injured one by attempting to cure a wound - the master was held to be liable. 22d 1841
639

If a Blacksmith's servant hammers or injures a horse in 'thoing him - the Blacksmith himself is liable. 1 B. & P. 431

In a modern case, an action on the case was brought ag. the master, for his servants wilfully driving his cart ag. the Deft's - the action was not sustained because the court said it should have been happ or at armis. - The decision (say all) gent was right but the reason of the decision was wrong. The fact is case was the proper action, if any would lie ag. the master - but the master in that case was not liable.



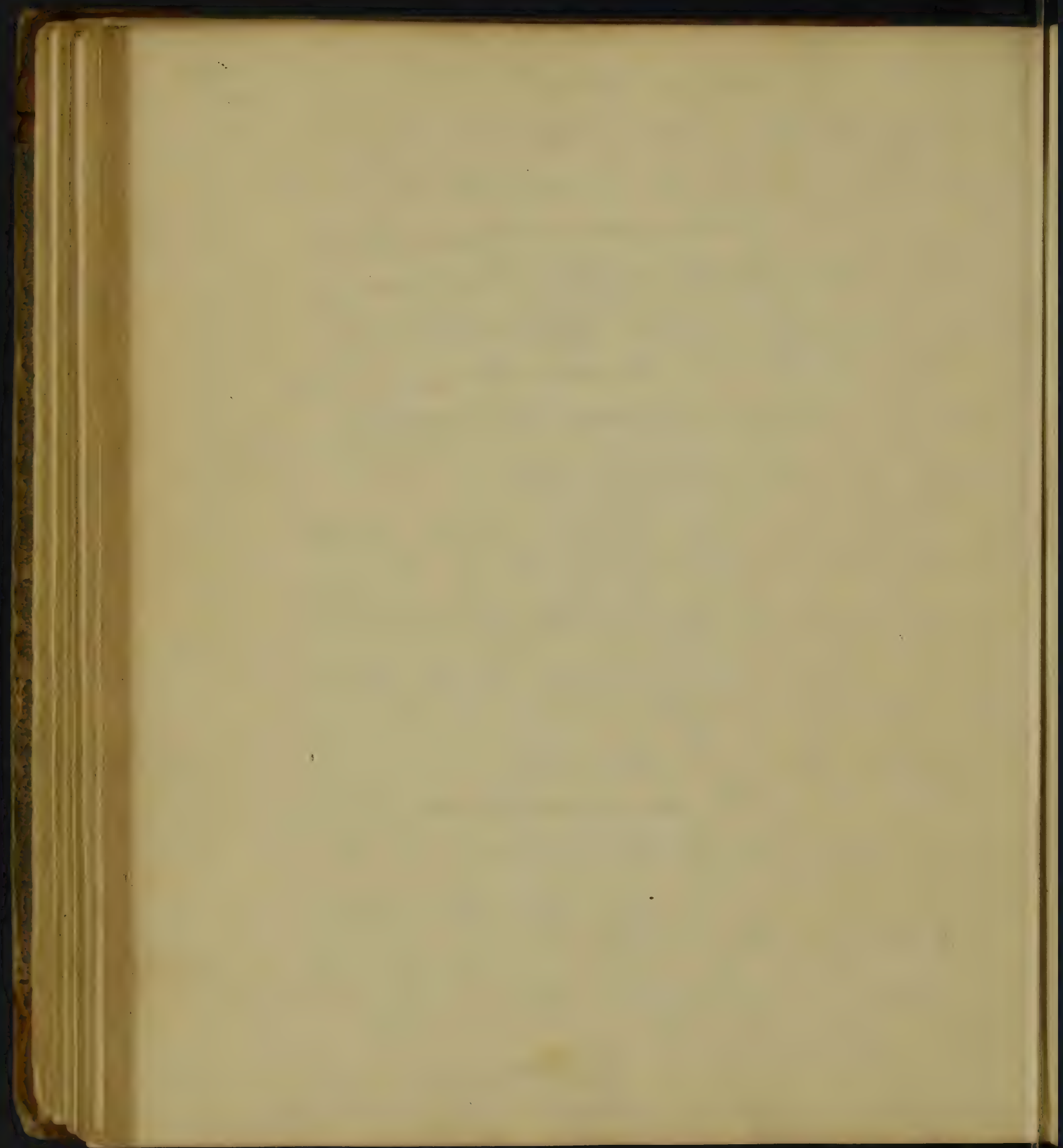
Shortly after this an action of trespass was brought before the common pleas ag. the master for the servant negligently driving his master's cart ag another &c and the court held, and rightly too, that case was the proper action and not trespass vi et armis.

It was in this case the court threw out a hint which by a subsequent decision in court of Kings-Bench has become a settled principle. 1 East-105

This was an action of trespass vi et armis ag. the master for the servant wilfully driving his carriage ag another; and the court held that no action at all would lie in such case ag. the master. And Lord Mansfield there retracted what he before gave as a reason for not supporting the action on the case in T. R.

It is a little remarkable that these decisions are all correct - the first and third cases no actions at all would lie ag. the master because the act ^{was} done by the servant wilfully; In the second case the master was liable, but the form of the action was not suited to the case, it should have been case.

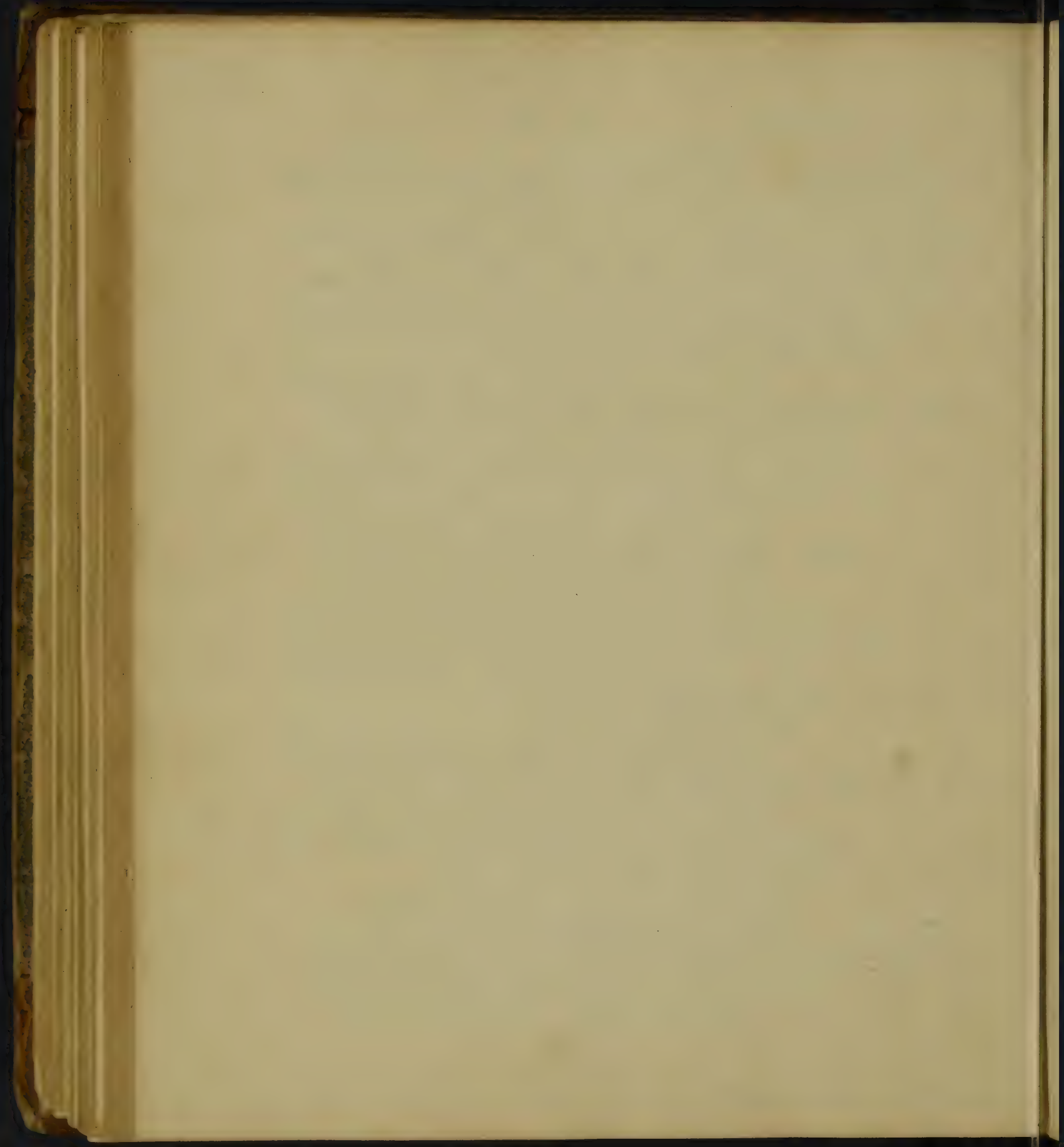
Where the master is liable for a forcible injury committed by his servant not by



his command the remedy is easier. When he is liable for the neglect of the Servant case will of course be the remedy, and in neither case can the master be liable for a breach of the peace. In the master in either case is liable only by imputation or fiction of law, but he cannot be subjected criminally by legal imputation, for the maxim is in fictione iuris consistat equitas. But if the master is liable in trespass, he is liable criminally for a breach of the peace, but he is not liable criminally as has been proved, and therefore he is not liable in trespass for the acts of his Servant: i.e. when not done by the command of the master either express or implied.

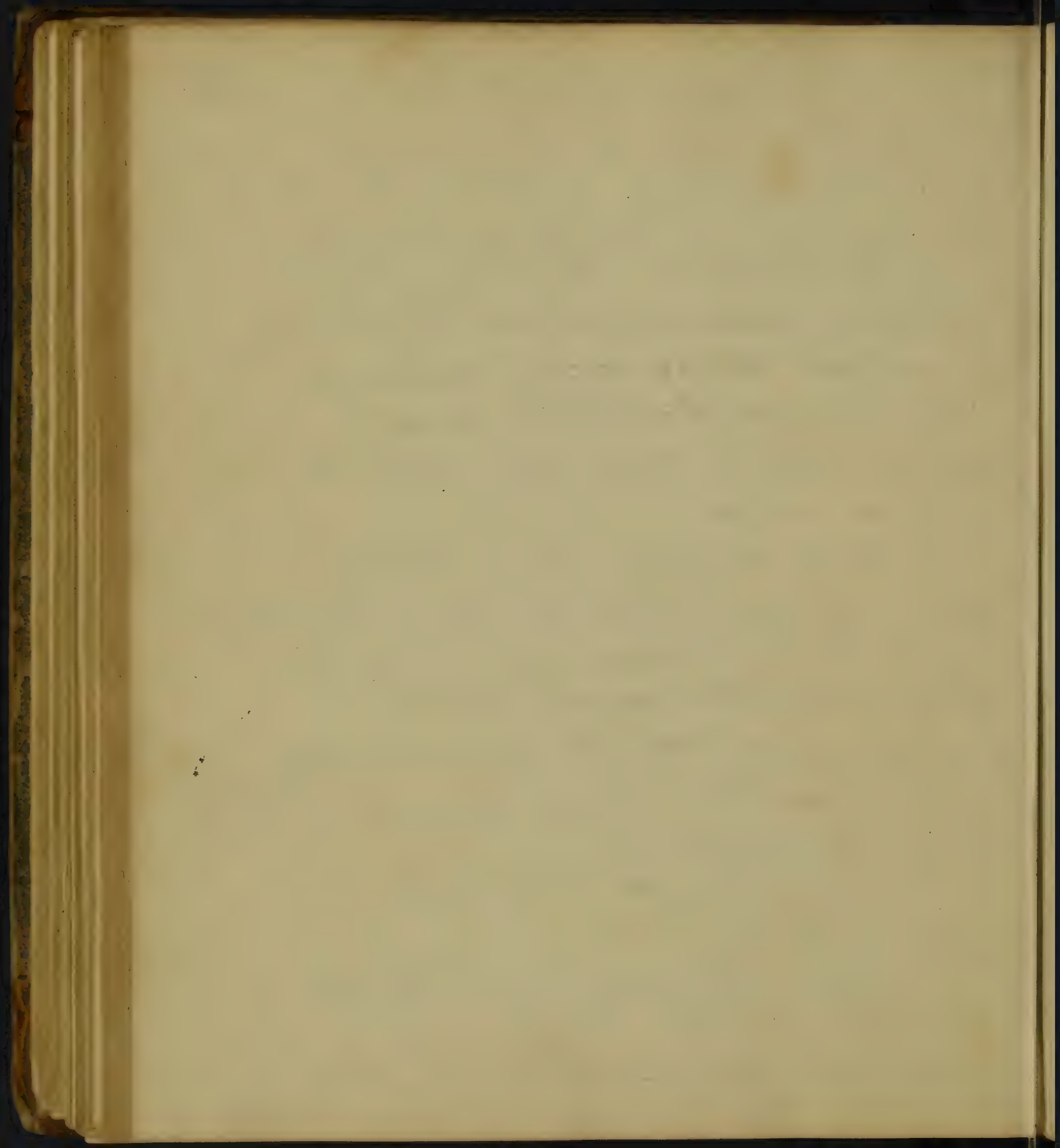
If the Servant of A employs another Servant to do the business of A, which latter servant by his negligence injures B through A. The original master is liable, as well as the Servant who does the injury. 1304
111

The case was, a man employed A to dig for him A employed B, B employed C and C employed D, who undermined the wall of another. The action was brought ag. the master, and was sustained. I don't say that it be true the principle of this case is supported.



It seems that the case in question is the first in which this principle was avowed. I do not take it upon me to say that this is not law, yet I doubt the principle. No action will lie against the intermediate servant nor him who actually employs the wrong doer. But (says Mr. G.) if the doubt which I have raised is founded in principle, it will follow that the intermediate servant who employed the wrong doer is liable.

Suppose a Blacksmith's servant in having a
rowe withfully takes him the Blacksmith's hat
or the square off the implied contract, with him



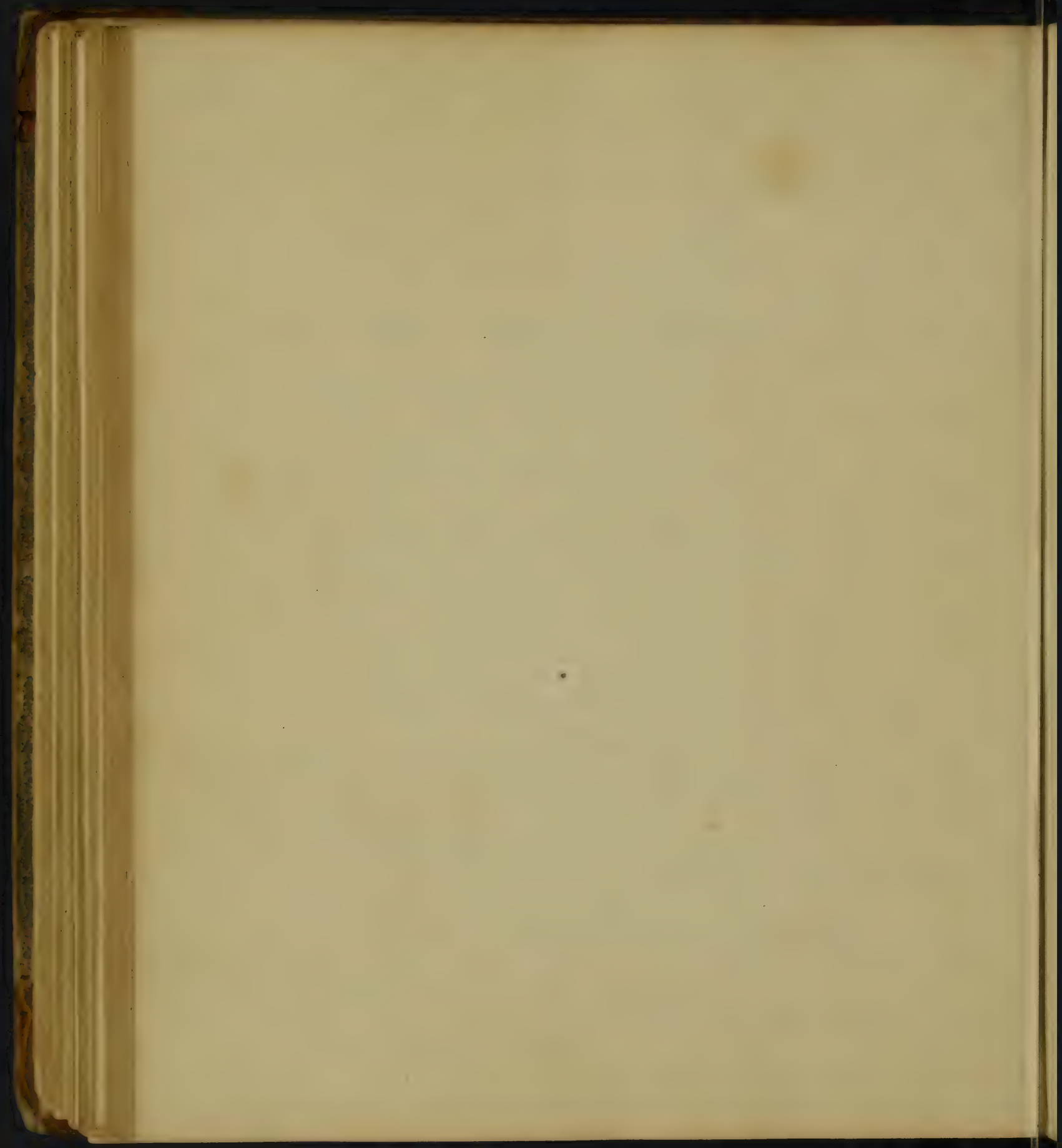
& the owner, that the business should be done with skill and faithfulness. So it is with a Taylor if his servant gives a garment wilfully - it is a violation of his & the master's implied engagement to do it well, and therefore the master ought to be liable - Suppose the master sends his servant to take a horse in a waggon and he himself goes forward, and makes a special warranty or contract with all he meets that the servant shall not wilfully injure their carriages, no doubt but the master would be liable in case of wilful injury.

As the analogy of master and servant to Post-masters and their Deputies, several attempts have been made in Eng^d to subject Post-masters to the defaults of their deputies. But it now settles that Post-masters are not liable for the acts or defaults of their deputies or subordinate Post-masters.

This doctrine is founded upon sound principles. The Post-master being if a servant he contracts with the public for the faithful discharge of his duty, as, or his hire -

The public has the postage and compensates

2. Eng 1846
16th 17
16th 1847
16th 1844
16th 1843



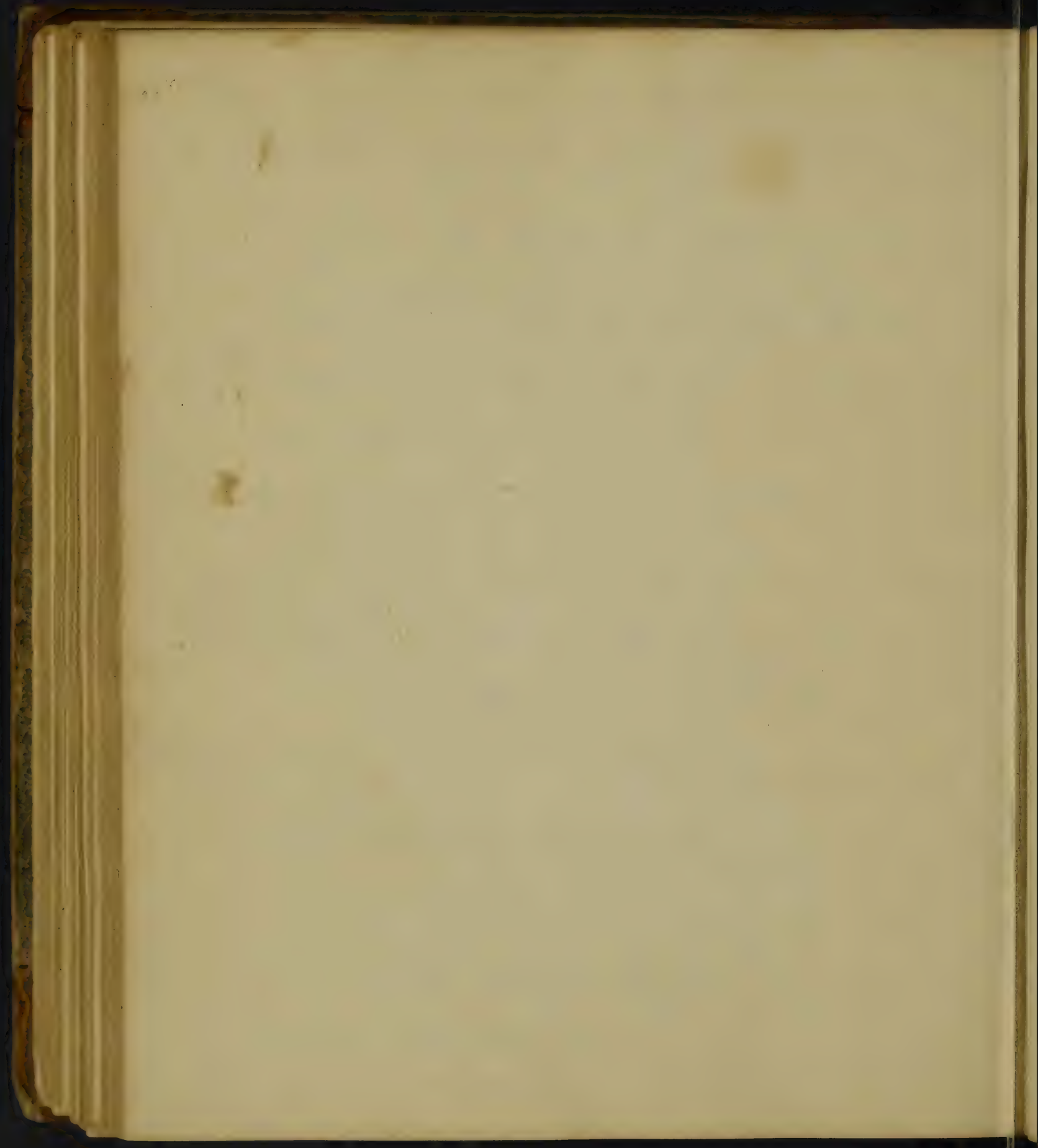
him by wages or a salary. In analogy to the principles before laid down, that the master is not liable for the acts of one employed by him, the postmaster cannot be liable.

But the postmaster is liable for his own actual defaults, and so are all his deputies respectively. *Statute 623*
Comp. 765
2d Ed. 2906
 In *Reeve* - the postmaster for his and the deputy for his.

As the postmaster is liable for his own defaults - so he is liable for any extortion practised in his office, and if money be obtained by any illegality - *11th. 182*
Comp. 420
2d Ed. 274
 the injured party may have an action of indebitatus assumpsit ag. the postmaster himself.

Thus far as to the general liability of the master for the acts of his servant.

But the liability of the master upon the contracts of his servant, requires a particular consideration. It is a general rule that the master is bound by the contracts made ^{for} by him by his servant when - *3d Ed. 234*
 ever the latter acts within the scope of an authority *103. 457*
 delegated to him by the master, and this authority *2d Ed. 513*
3d Ed. 271



may be either general or special, express or implied. § 2. 1551

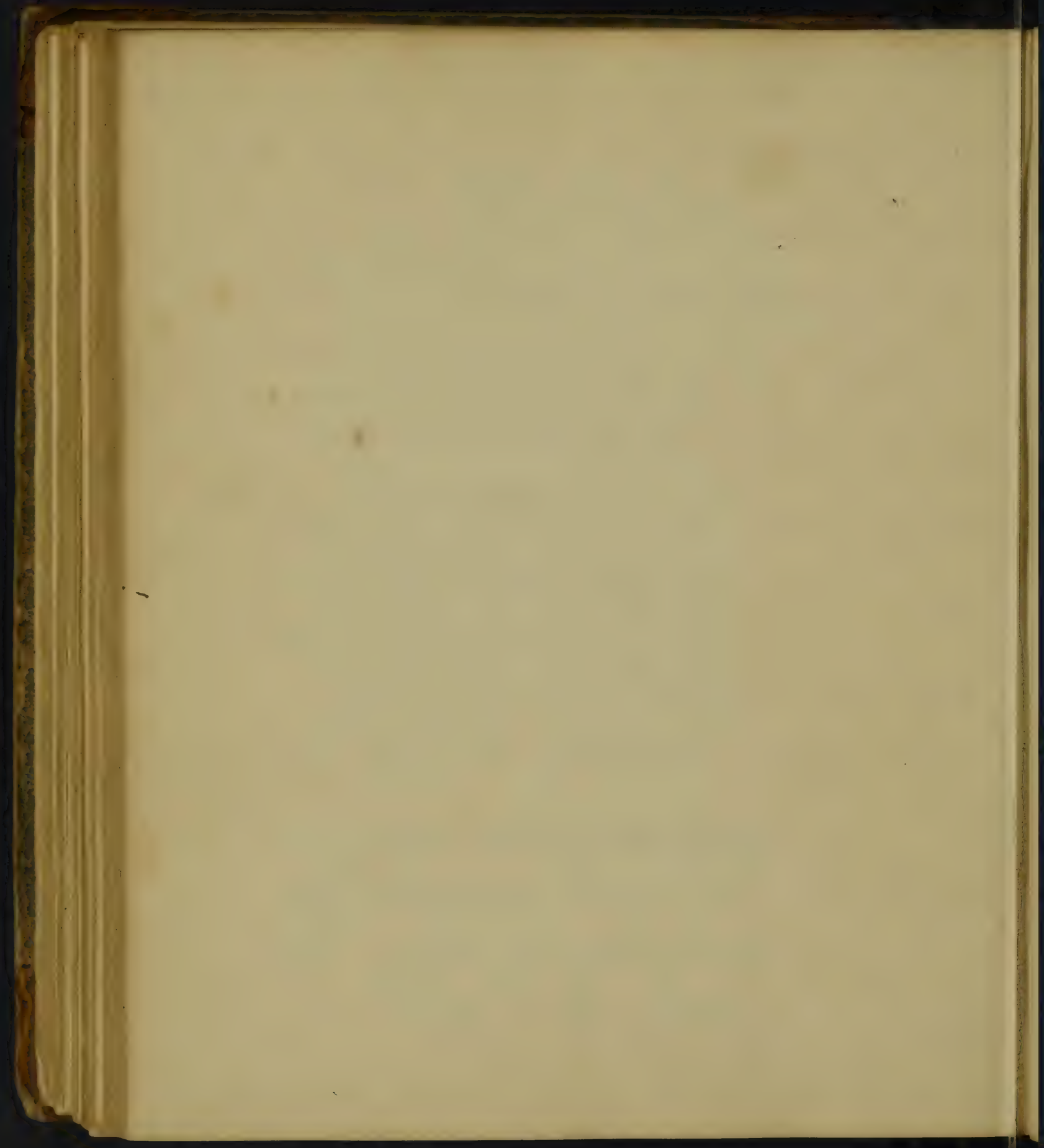
A general authority is one which is not confined to any individual contract, but which extends to contracts generally, or to all contracts of a certain kind or description, as where a Housewife is employed to purchase necessaries for a family, or a clerk in a Store whose employment extends to the making of all contracts, in the course of trading - as the sale of goods and purchase of produce. These are termed general authorities.

But an authority may be still more general as where one is employed to make all sorts of contracts.

A special authority is one which is confined to one or more individual contract, or transaction, as if one employs another to buy him a horse, or a farm, or to sell one.

An implied authority to contract acquires no definition - it is merely an authority expressly given.

A general authority may be implied from the master's general usage, or frequent practice as where one employs a Housewife to purchase necessaries. A special authority may also be implied,



But it rarely happens in experience, that if a servant makes a contract in the presence of his master, and expressly for his master, and the master knowing it does not prohibit it, his silence and acquiescence are construed into an implied authority to make such contract, for the maxim is qui non prohibet non prohibere solet, potest.

10 B. 431

10 W. 1312

If the master has made it his practice always to send his servant to purchase necessaries with money to pay for them, and never to permit him to trade in any other way, the master is not bound to answer for any purchase by the servant when credit of the master, and that the articles were similar, because the servant had not been in the habit of taking up goods on trust.

2 B. 234

1 W. 45

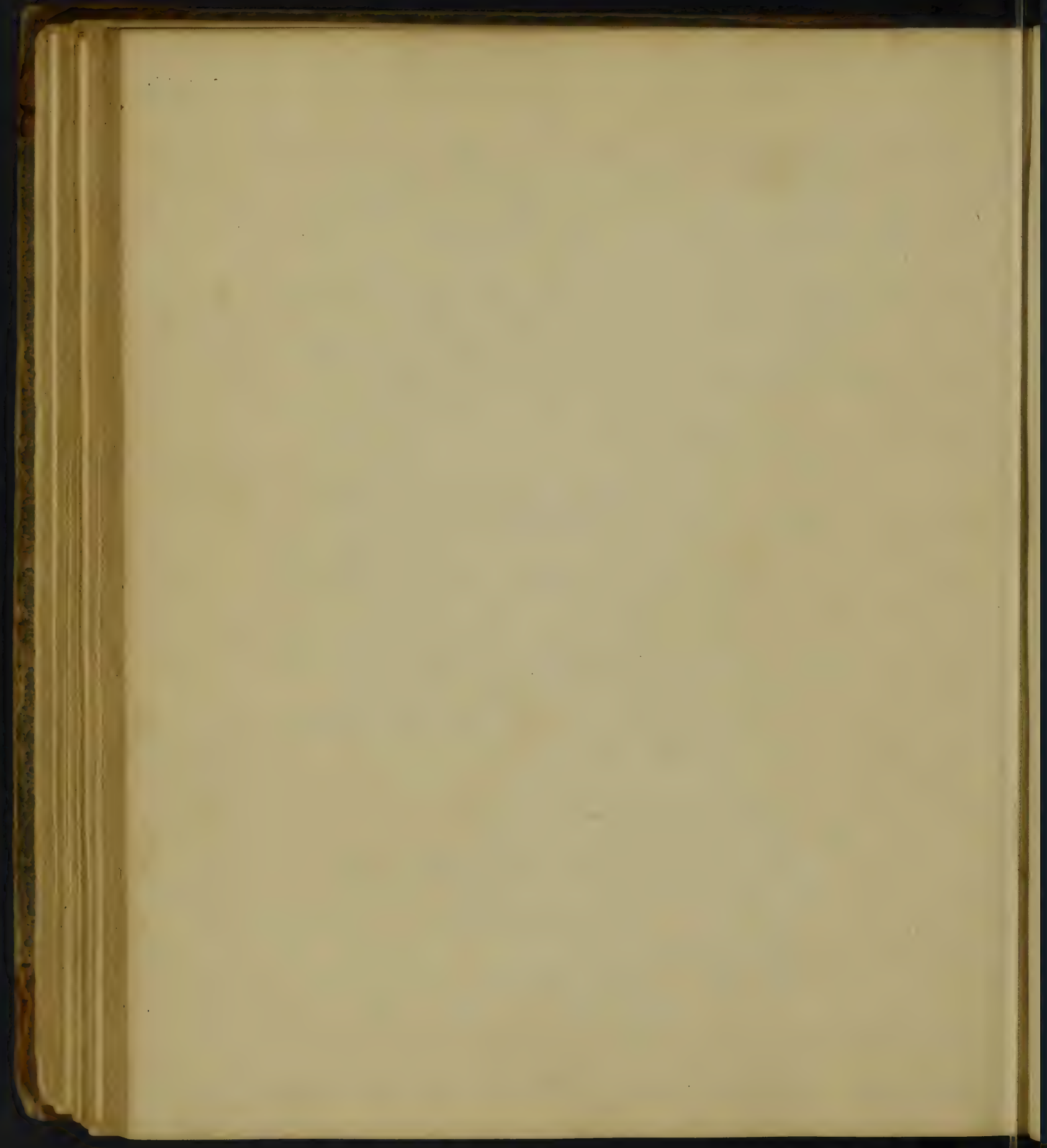
It is otherwise where the master usually, or frequently permits his servant to purchase upon the credit of the master.

1 B. 1456

3 B. 234

10 W. 1312

In this case he gives the servant credit with that particular merchant, or as the case may be with the public. But in general if the servant without any

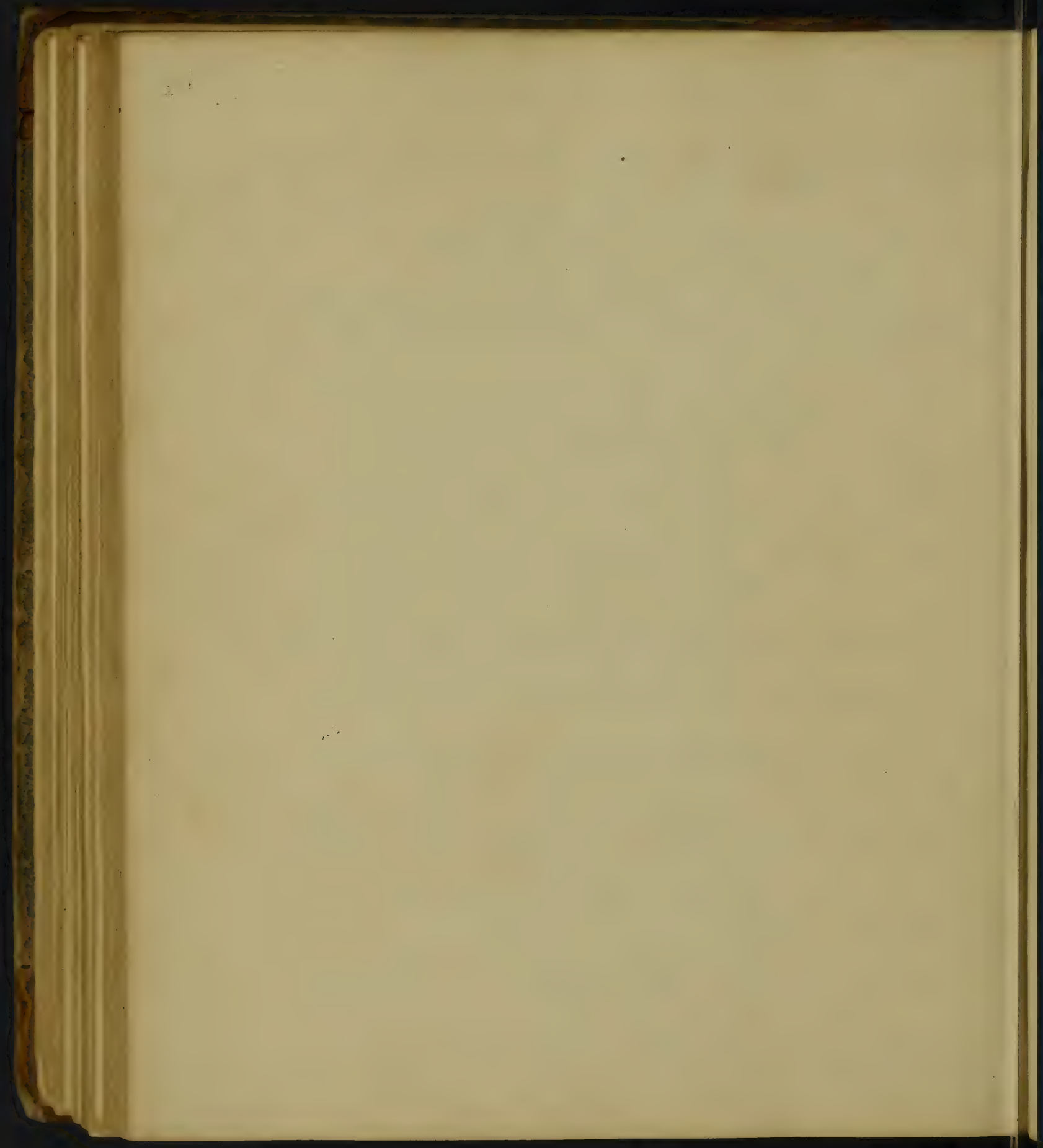


prior authority purchases articles for the master and such articles come to the master's use, the master is liable tho' no credit had been given to the servant before. Hilly. 76
Shaw 625

This using such articles is construed into an apparent subsequent, and such a fact is in law a ratification of the contract at initial.

But suppose the master has given his servant a general authority either express or implied, but in a particular case gives his servant money to buy certain articles. The servant emburses the money and purchases the articles upon trust for his master, which articles afterwards come to the master's use, the master supposing they are paid for. Is the master liable? Lodg. 224
Wick 234
37 R. 760
10 M. 110

This is a question which remains unsettled in the books, and about which there has been much doubt, but it seems to me (say C. J. G.) that there are principles already established sufficient to decide the point. I suppose the master in such case is not liable. In other cases where articles come to the master's use, the law proceeds upon the ground of an apparent subsequent by the master his using the



articles is considered as an implied consent to the purchase. But in the present case the master is by the supposition ignorant of the trust, and here can a man be bound to what he is ignorant of. He does not know of the existence of such an executing contract, and the law can never suppose that he has assented to it. The fault or negligence lies upon the trader and not upon the master, for the master did not intend to give the Servant credit with the merchant, but the merchant was so incautious as to trust him, and the general rule is that if one of two innocent persons must suffer by the act of another, the loss ought to fall upon him who trusted the rogue.

But tho' a master has permitted his Servant to trade in his name, yet he may discharge himself from future liability by forbidding such merchants from trusting the Servant or his account, and if the credit of the Servant has been public, he may discharge himself by advertisement. But the master cannot countermand the Servant's authority to contract by any thing known only between the master



and Servant - nor will the master be discharged from liability as to contracts made afterwards, by a dissolution of the relation of master and servant unless such dissolution be actually known to the merchant who trusts the Servant or the master's account, or unless the same be a matter of public notoriety or common reputation, and the rule in such cases is that the prohibition not to trust on the notoriety of the dissolution should be as public as the credit be given to the Servant.

12th 20
3rd 762.1
14th 42
15th 4
17th 203116

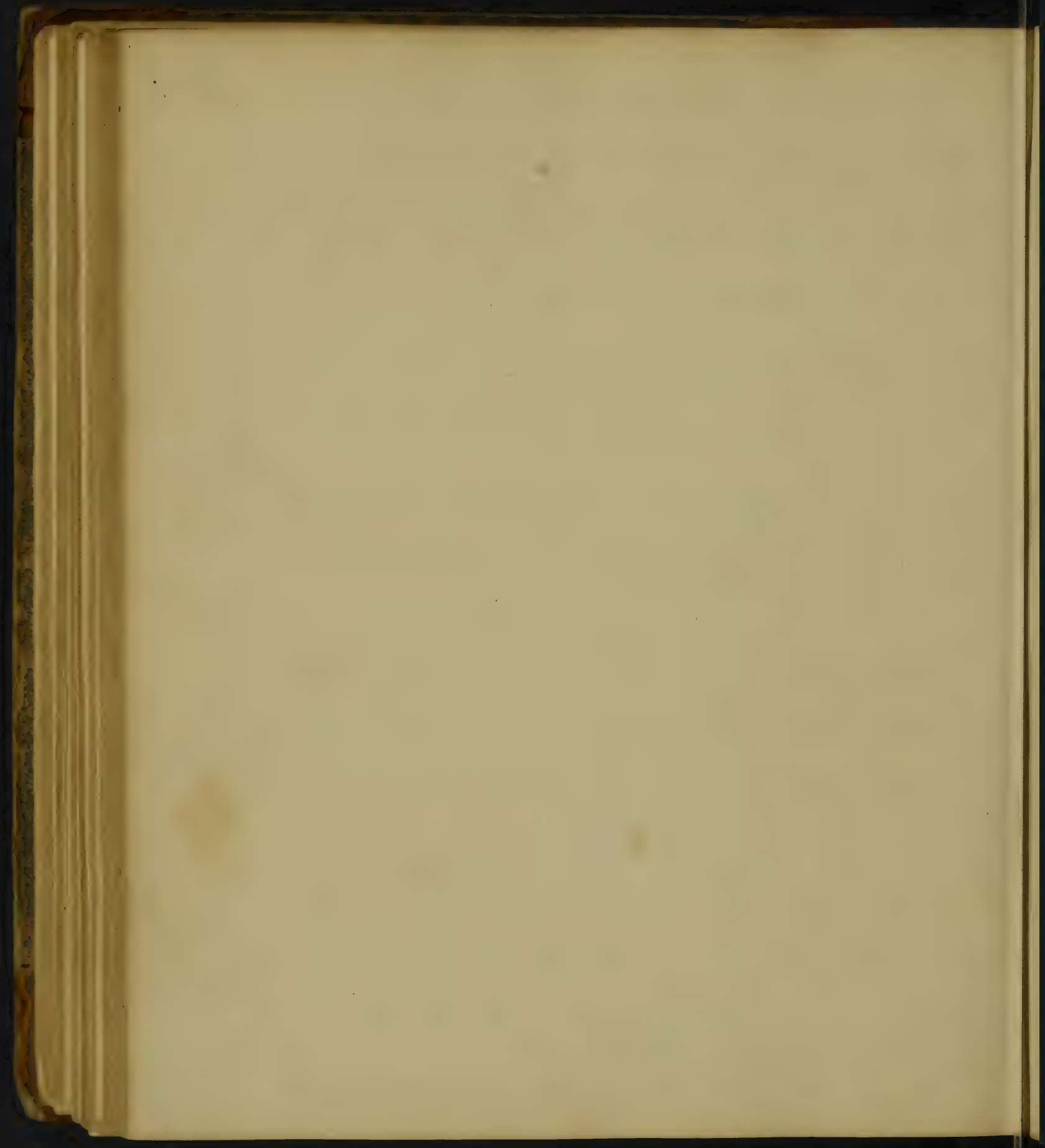
If a Servant in making a particular contract as selling goods, makes a warranty as to the quality of such property, the master is bound by that warranty, unless the master expressly restrains him from making such warranty.

12th 177
13th 757
14th 287

And where the Servant in making a contract of warranty acts within the scope of a general authority, even in express restriction not made public, and not made known to the purchaser, will not exonerate the master.

11th 505
13th 55
17th 911

But if the master had expressly prohibited the



Servant from making a warranty then the master will not be liable on the warranty.

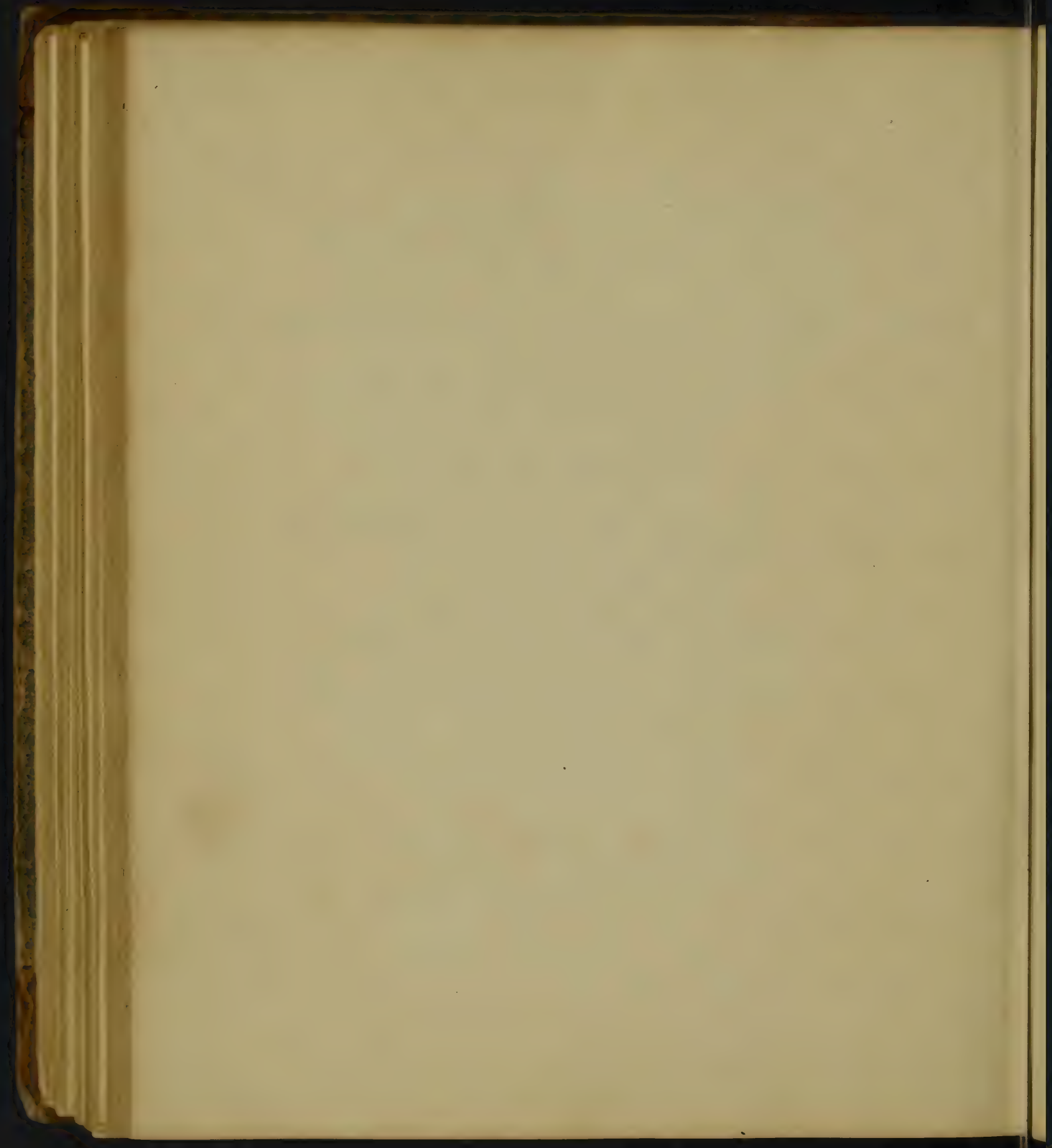
1. m. 109
8th 10.10

But it is asked what is the difference to the purchaser who knows not whether the servant is authorized to make a warranty or not? Suppose the servant of one having a livery stable, whose ordinary business is to sell all warrant horses, warrants a horse to be sound, the act the express command of the master, yet the master will be liable, because he acted within the scope of a general authority. The purchaser had a right to presume that the servant had authority to warrant, and this notwithstanding any private restriction unknown to the purchaser.

But suppose one be authorized to sell a particular horse with an express restriction not to warrant. There is no general authority the purchaser has no reason to believe the servant had authority to warrant. He may, perhaps infer from his being entrusted with the horse that he had a right to sell, but not to warrant him sound. But if the servant has in fact no authority to sell, the purchaser

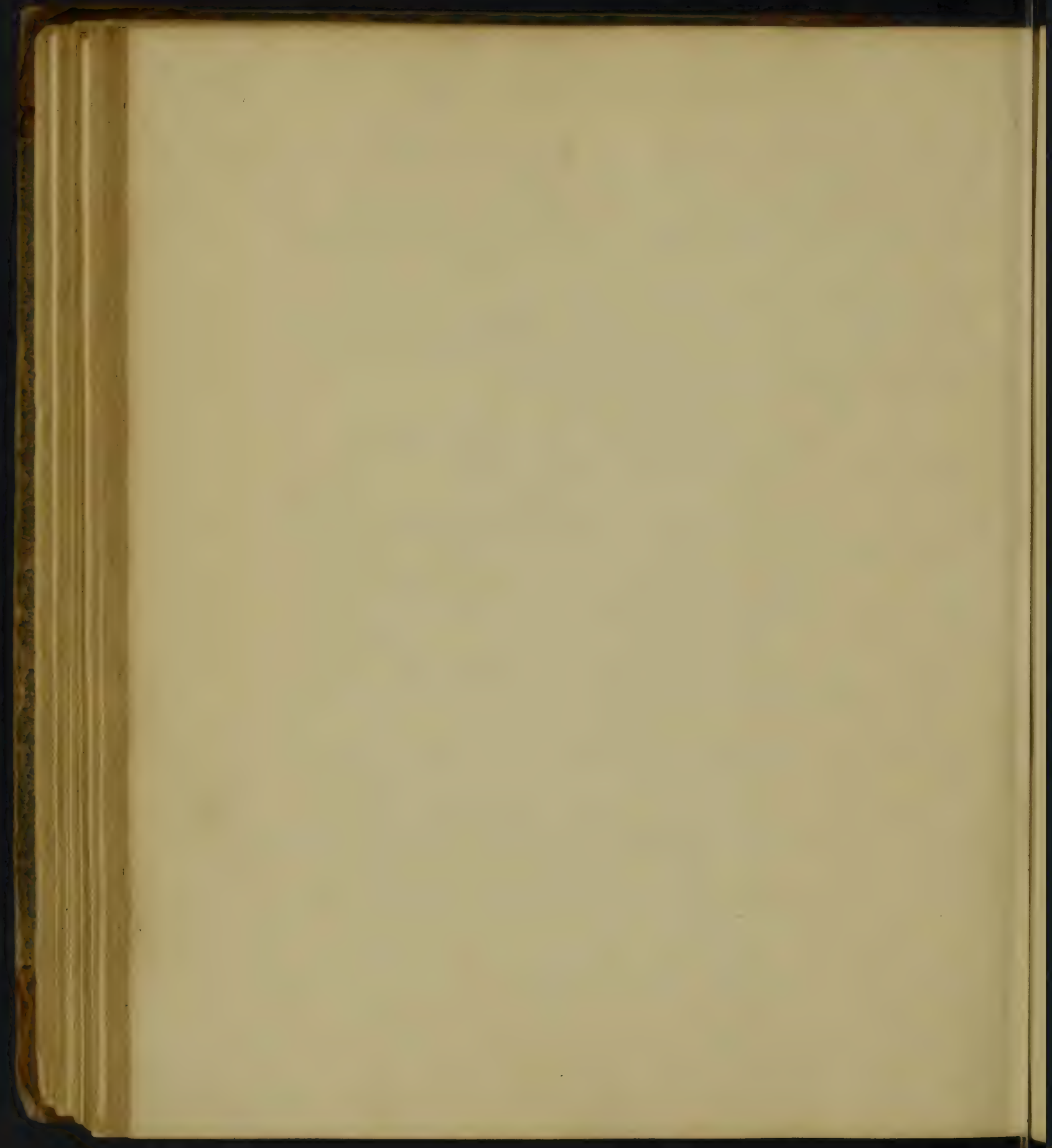
3. 10. 10

" 10. 10



cannot even take the house of the master - the master
 he takes this right upon himself, and a further he
 takes upon him the right as to the Servant's right of
 warranty, and no action will lie ag. the master on
 such warranty. This rule (say all^{tho}) is founded on
 the best reason, and soundest sense.

It appears that a very leading case in
 Re. Par. 17th 10th is Howe, is of questionable authority,
 the case was A having a counterfeit piece sent
 B to the coast of Barbary for the purpose of
 selling it to the King of one of the Barbary Powers.
 B put it into the hands of C a broker living in
 Barbary because C was likely to have access to the
 King, after it was sold to the King and discovered to
 be counterfeit, it to the broker was impounded till he
 paid £800 B now brought his action against A the
 master or original owner, and it was held that
 the action would not lie, because A, did not ex-
 pressly command his Servant B to warrant it, but
 according to the rule before laid down he in such ^{that is}
 case would have been liable, for he did not expressly ^{248.}



is not the same as for a servant.

See 10.

Another case is to be found in the books on this subject equally questionable. It is said elsewhere that if the master directs his servant to go to some place at a public fair, and direct him to see to any particular incision, the master is not liable on the implied warranty that the horse is sound.

See 259.7
Shab 53
S. L. 7.7

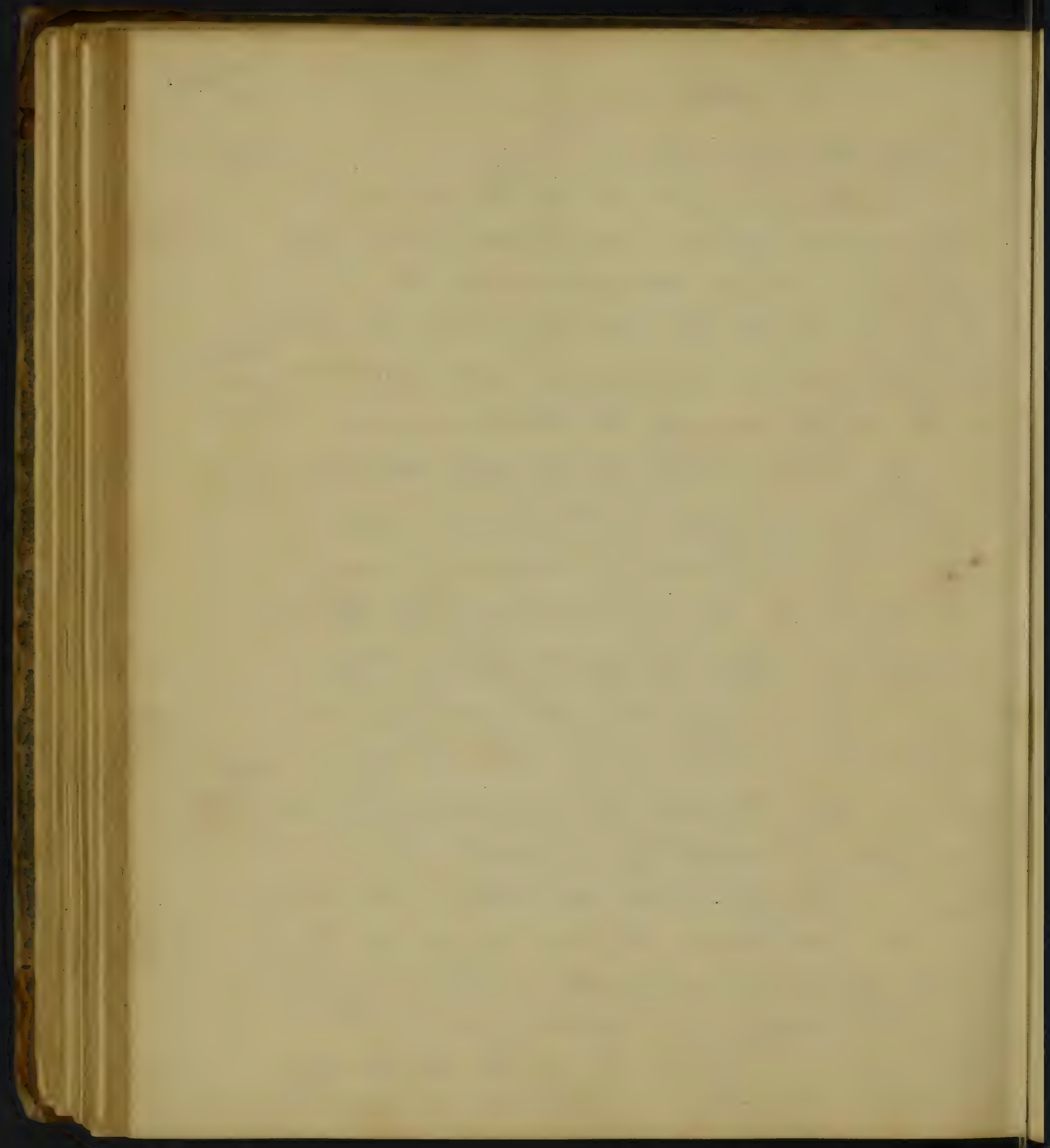
If a merchant's clerk sells the goods of his master and represents he is the master, the master is liable.

See 259.7

The servant himself is not generally liable for contracts made for his master. But if the servant expressly takes upon himself the responsibility, he may subject himself upon such contracts, & when he thus takes the responsibility upon himself, he does not act in the capacity of servant, but in his own right, independent of his master.

See 259.7
Shab 53

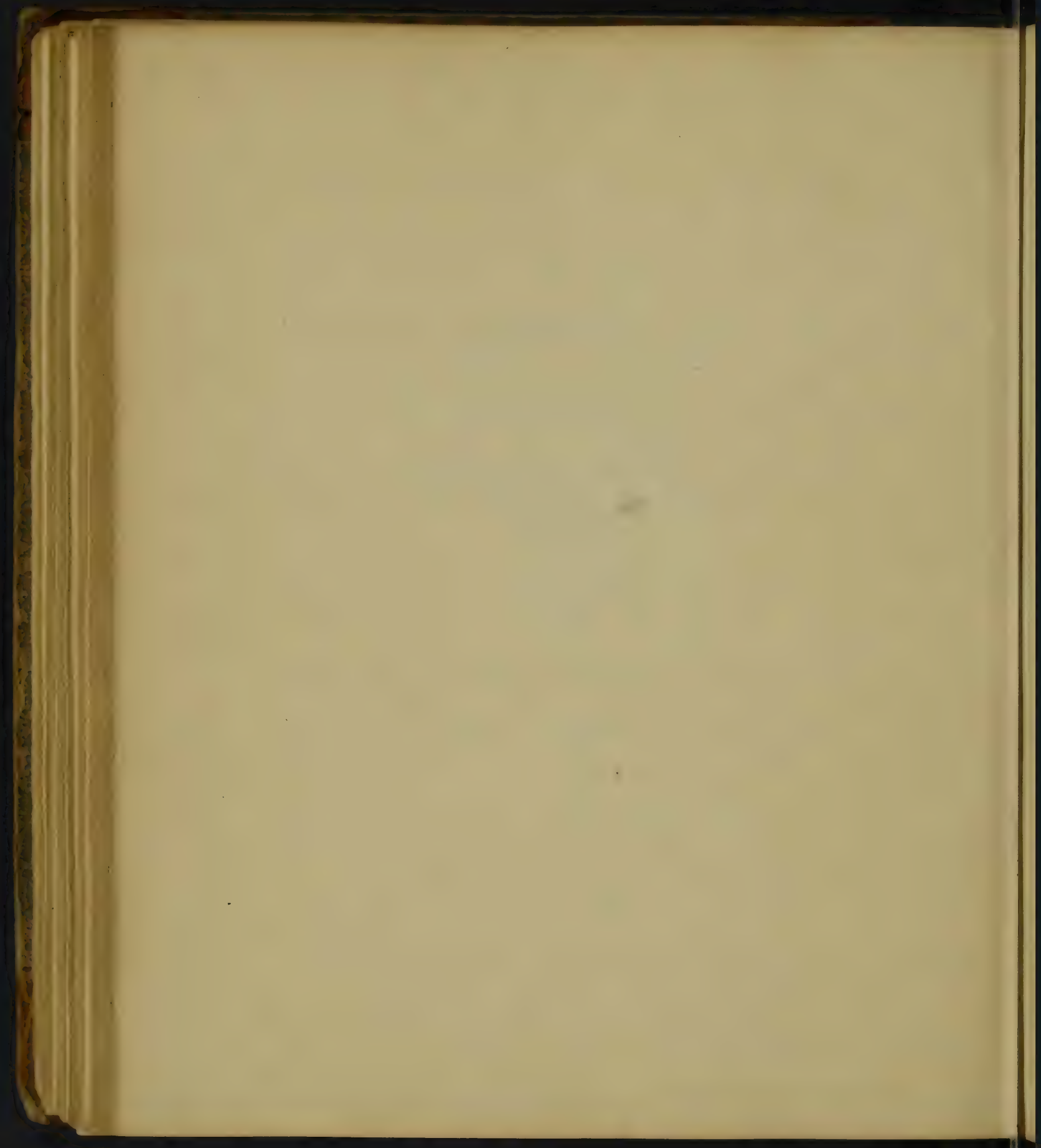
Thus if a servant sells a horse and warrants him in his own name, he is for the benefit of the master, yet the warranty will bind the servant. And undoubtedly if a servant makes a contract in the name of his master, when he has no authority from the master, except a promise, made by which the



Master himself is not bound, the Servant must be personally liable. When one assumes to contract without authority he only is bound and it may here be observed that any one who acts for another and under his authority is to be considered his Servant per se nature. Thus if a wife makes a contract for her husband, he is bound for she cannot be by reason of coverture, and so it is if a minor makes a contract for his father, the father is bound for and not the minor. 12. 430

But Stat has introduced a new rule upon this subject. It provides that any person under the government of a master, parent, or guardian who is authorized and allowed to contract for himself, and does contract for himself in, for the Servant, the Parent, master or guardian shall be bound by such contract, and such contracts as against the Servant are according to the decisions of the late Supreme Court of Errors not only voidable but void. 12. 437

A case occurred in Stamford (principally) also, where one Mr. Isaac permitted his son a minor to go into trade by himself, in company with



another, under the firm of Isaac & Co. They afterwards became insolvent, and a creditor of the company brought an action ag. the Father of Isaac, and the other partner as partners in co. under the firm of Isaac and Co. and the action was sustained.

In another case a widow and her minor son set up trade together under the firm of A and son they became insolvent and a creditor brought an action against the widow alone which was sustained.

As that was intended by the word Master all classes of Masters and Servants - Factors, Agents, Attorneys and others of the fifth class above were included. Hunt says (11: 96) that it extends to no other Servants than slaves, and such apprentices, and menial servants as are under age - such as are under the domestic government of a master &c, & not day labourers &c.

Thus far as to the liability of the master for the acts of his Servant.

Next consider How far the Servant himself is liable, for his acts and defaults, as to third parties and



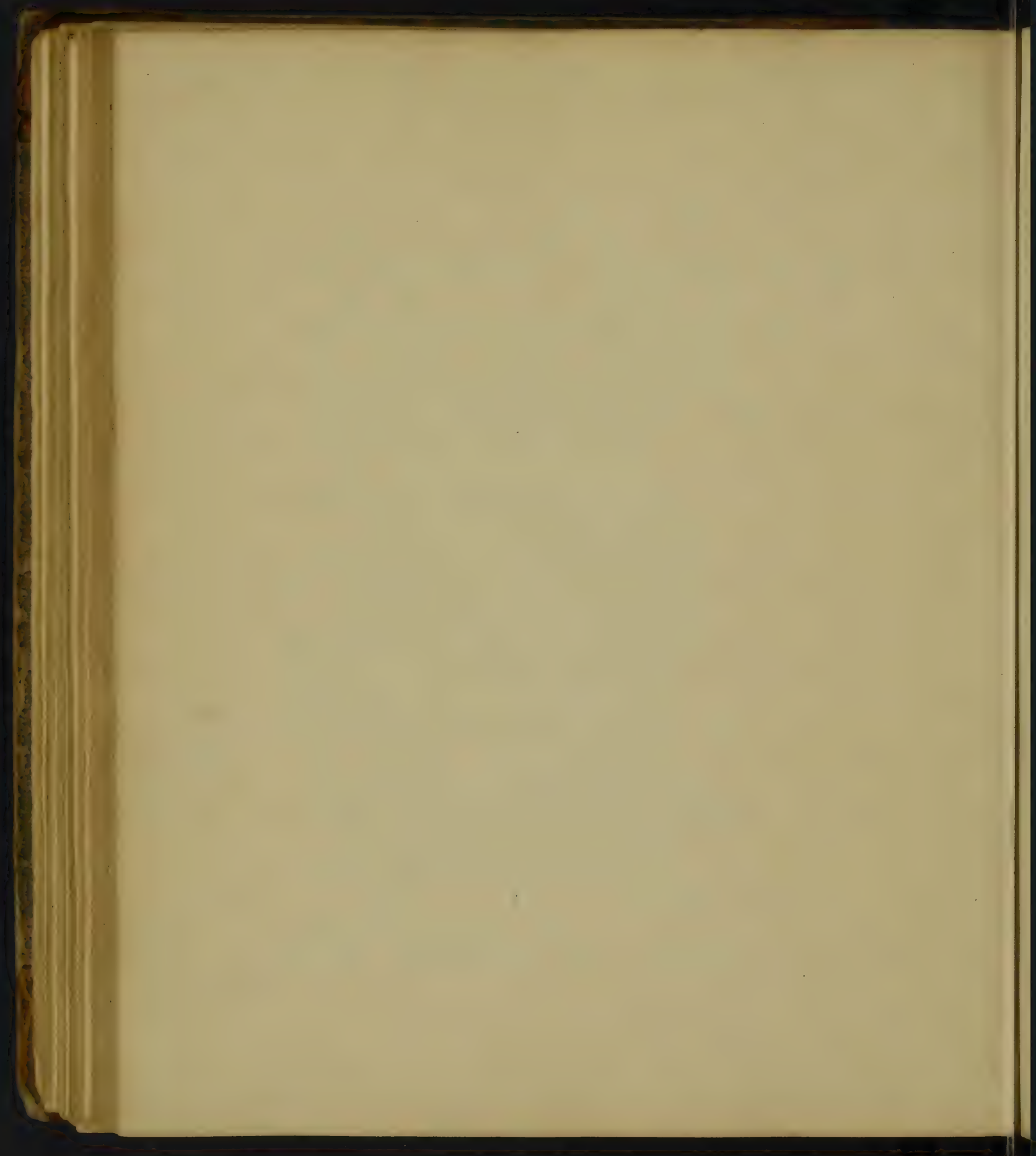
his master.

The great general principle as before ob-
-served is that for those acts of the Servant, which
are done by the master's command either express
or implied the master is liable, and on the contrary
those acts of the Servant not done by the command ^{100.118}
of the master either express or implied are not bind- ^{100.6.131}
-ing upon the master.

It is also generally true that those acts of the
Servant not done by the express or implied command ^{3.11.62.}
of the master bind the Servant, and not the master.

In the purpose of determining what acts are
not in fact or in law done by the master's command
it is to be observed as before that all acts done
by the Servant not in discharge of the business
or authority with which he is intrusted by the mas-
-ter are not deemed to be done by the master's
command either express or implied, and therefore
not binding upon him. Hence it follows that they
do regularly bind the Servant. ^{Exp. 2. 6. 63}

Thus the master is not in general liable
for the wilful acts of the Servant because they

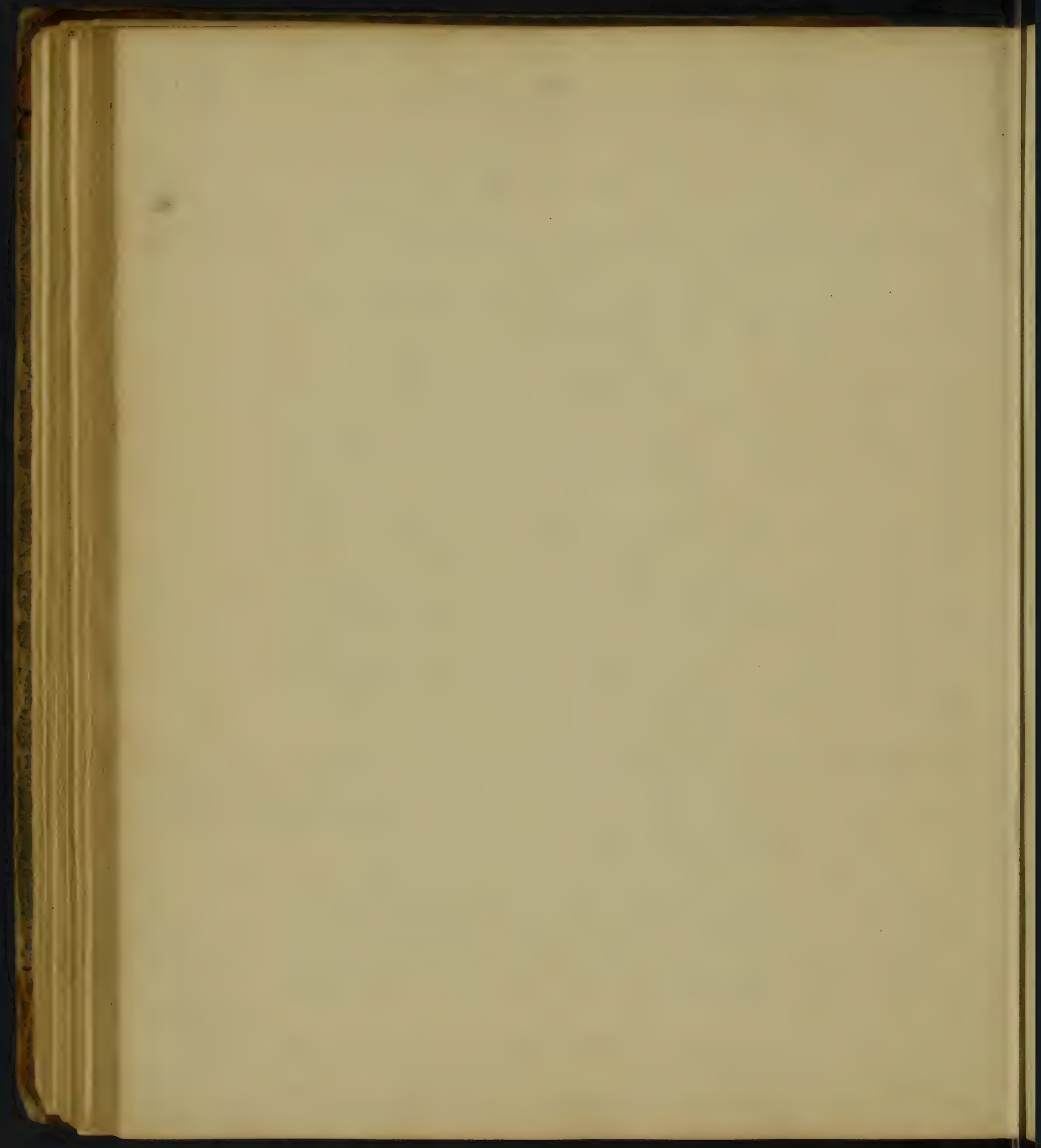


are not done in discharge of the master's business,
and as the master is not liable to the Servant only is,
unless where there is a privity of contracts. Cro. 175.

Some cases there are in which a Stranger who
is injured by the acts of the Servant may have
his remedy either ag. the master or the Servant, at
his election. And from an examination and comparison
of the cases says Mr. J. I take the rule to be this.

If the Servant in the performance of his master's
business does an injury to any one, either through
negligence, ignorance, or want of skill the Servant
as well as the master is liable to the party injured
provided the transaction in which the Servant was
engaged was not founded upon any contract express
or implied between the master and the injured party. M. 1083
1006378

Thus suppose a Servant drives a carriage in
pursuance of his master's orders, and by negligent
driving injures the carriage of another, the Servant
as well as the master is liable, and the rule is the
same tho it were done through ignorance or want
of skill. Every person committing a trespass is liable 125



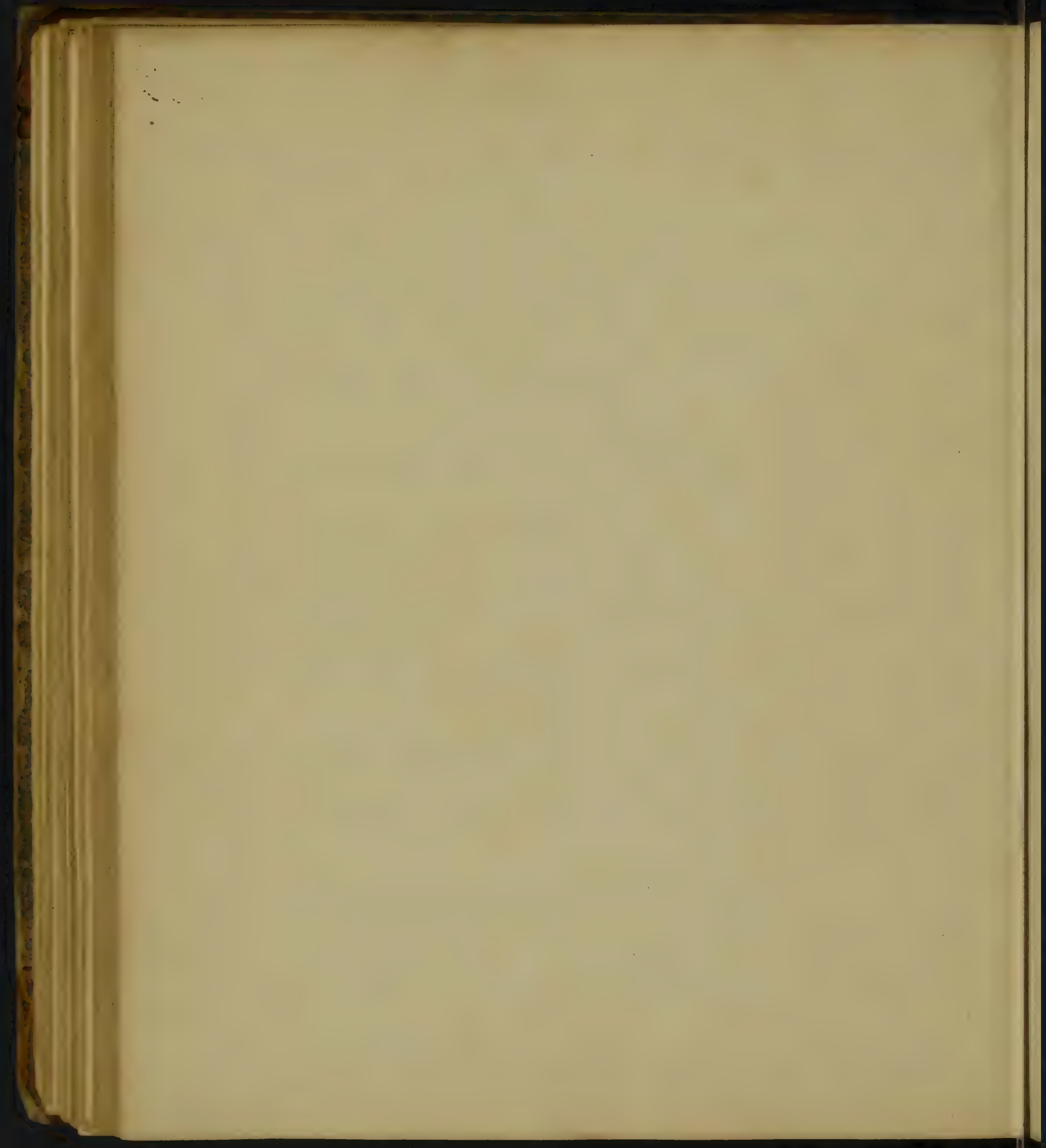
under whose authority soever he acts.

642000

The law of trespass does not regard the intent when the action is brought against the party immediately injuring - I suppose the Servant drives his master's carriage against the person of another, whether wilful or not the Servant is liable - unless it is if he drives against another while on foot.

But if the transaction in which the Servant was engaged at the time of the negligent injury, was founded upon a contract express or implied between the master and the injured party - I conceive says Mr. G. that the master only is liable, and the Servant not. I do not find says Mr. G. the negative part of the rule i.e. that the Servant is not liable, laid down in the books, but I apprehend the case will support the position.

Suppose an apprentice of a Blacksmith takes care to use this negligence - the master only as I conceive is liable the Servant cannot be considered as a wrong-doer - a trespasser. Any if the Blacksmith had done it himself he could not be a trespasser.

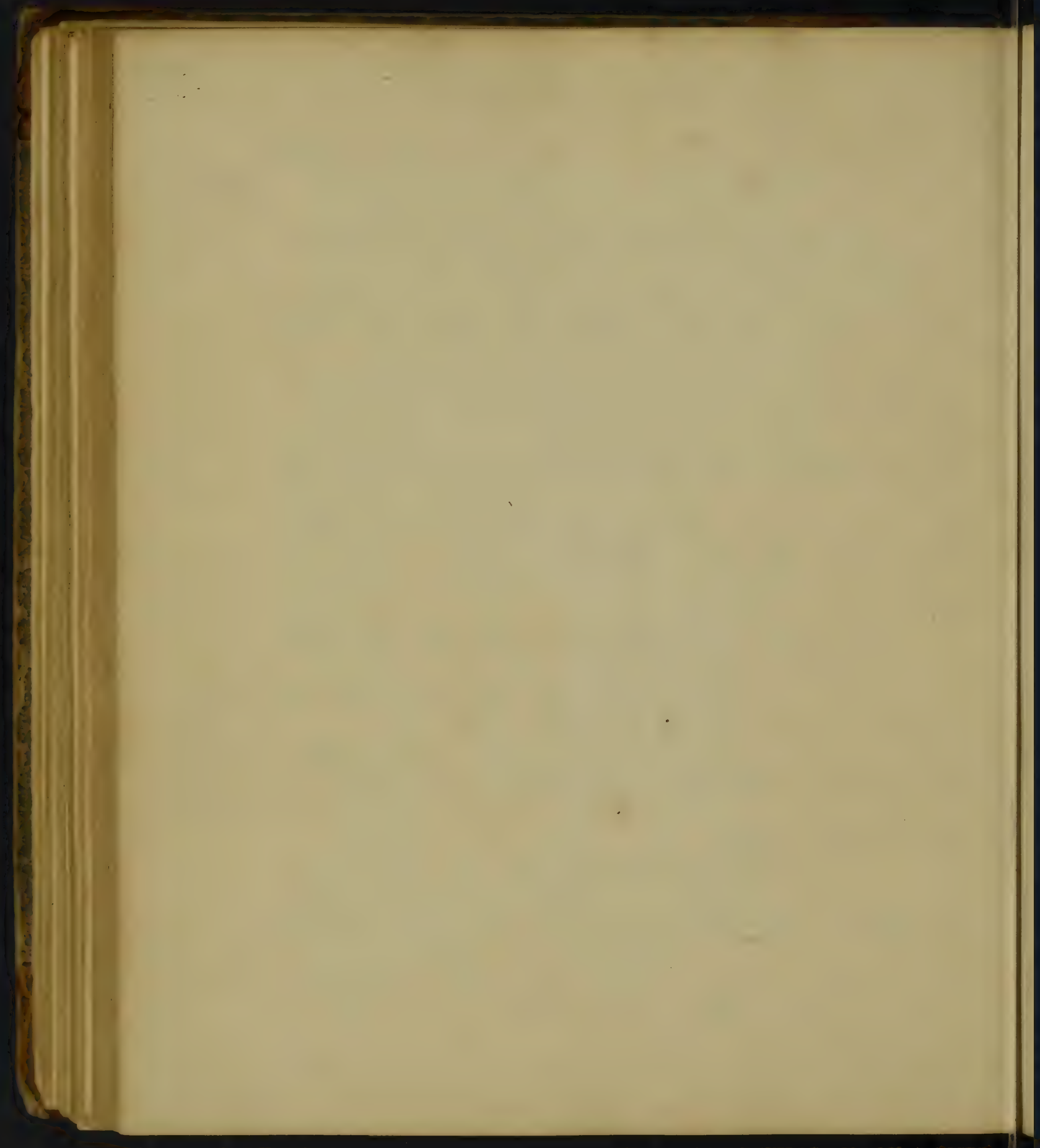


because of the bailment he has the lawful possession,
and so has the servant by virtue of his possession. Salk 386
608
Lamb 416

The injured party has no right to complain
except as to the injury consisting in the breach of
the implied contract to show the horse well. The
privilege of the contract puts him out of the question
and the servant can be no party to the contract.
Hence it follows that the master alone is liable. To
this rule however there is one exception and the
reason of it strengthens the rule as I have said it
down.

The master of a ship is liable as well as the
owner, to the freighter for any damage occasioned
by the negligence of the master, even though the freight-
ing was founded upon a contract between the owner
and freighter only. Salk 446
Carr 58
West 146
-199
218
6 D. R. 120.

The owner and freighter are often citizens
of different countries, and the rule is founded upon
general convenience and policy. The master visits
both countries. The master in this case is rather an
officer of the owner than a servant the he is subject
to the rules of master and servant. -

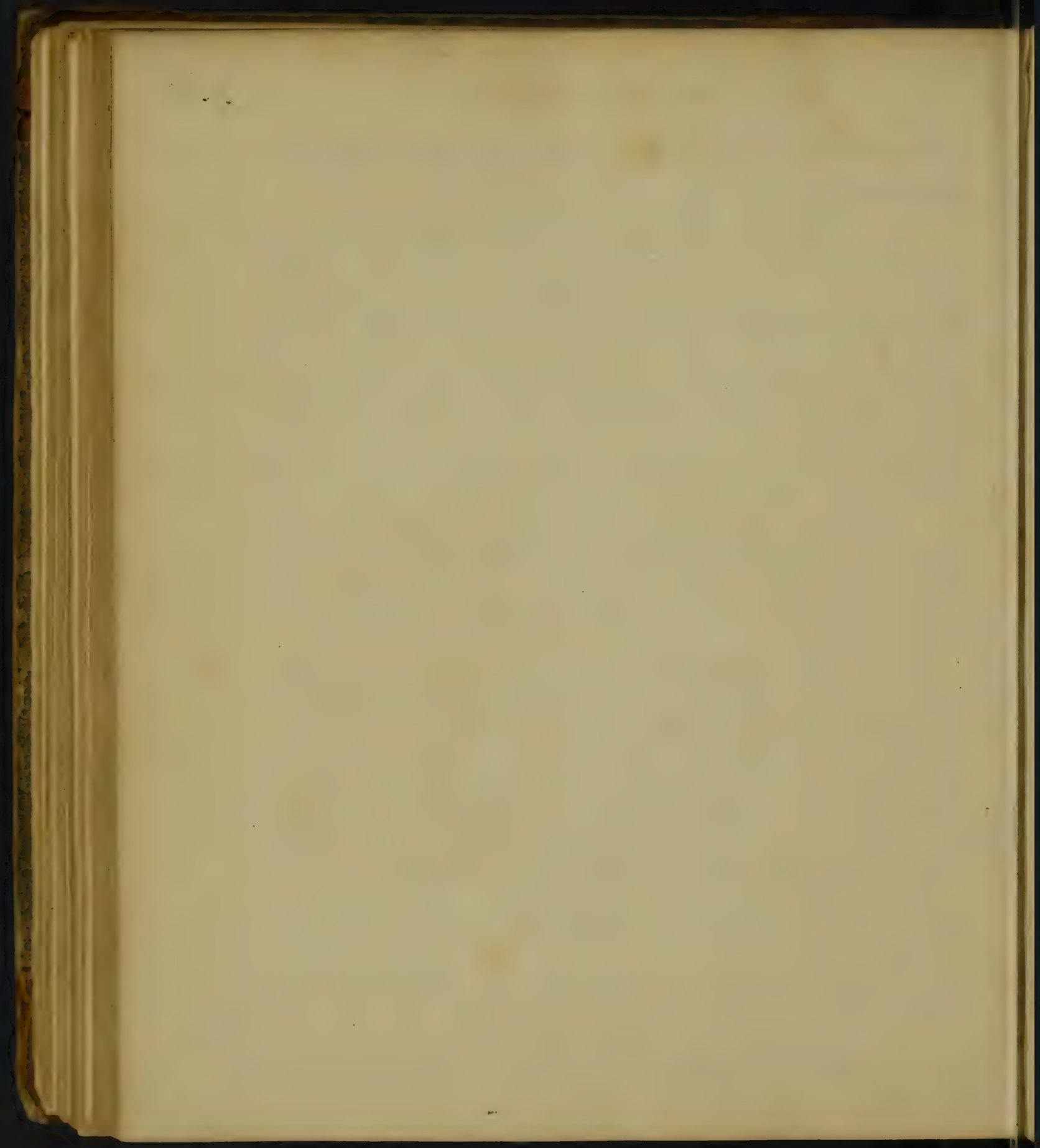


Thus far as to the liability of the servant in cases of negligence, ignorance, and want of skill.

But if a servant commits a wilful tort he is liable in all cases to the party injured, even though the transaction was founded on a contract between the master and the party injured i.e. he is liable even if it amounts to a violation of the contract or not. And the master is also liable if it amounts to a violation of the contract.

Thus suppose the servant of a Blacksmith wilfully takes the horse of another person. This is an act of his own, not done in the performance of his master's business.

An action of Debt against him will not lie against an officer of the Revenue for an over payment to him, but application must be made to the government under which he acts. He receives it for the government not for himself. But an action will lie against a married officer or any other public officer for money illegally extorted from an individual, for here he acts for himself. It is his own wilful wrong, and he shall be liable ^{for it} _{- 161} in any other way.

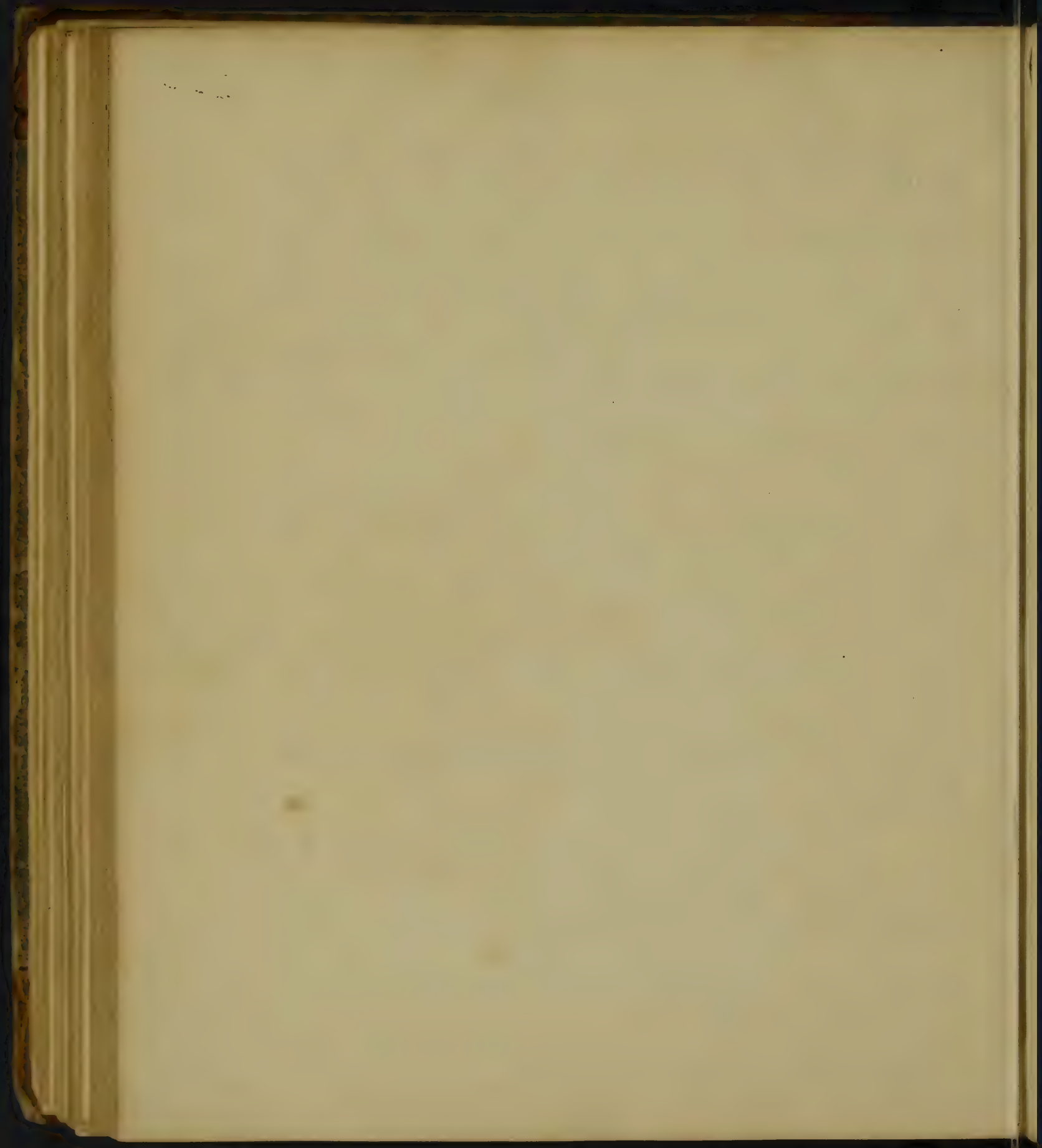


If an Attorney brings an action for one person ag.
another, and knew that there was a release of the
cause of action, he is not liable for bringing this suit;
reason given in the books is that he is a Servant, but
the true reason is that the Attorney is not to decide ^{1 Roll. 95}
whether his client shall bring an action or not, his ^{1 Mac. 289}
business is to give advice. ^{2 Bac. 45}

There must be no fraud however on the part
of the Attorney, he is so more privileged on ac-
count of his profession than any other man - so
where a Plaintiff Attorney after having suffered a
non suit enters up judgment ag. the Defendant he was ^{Hutton 145}
held to be liable. ^{6 D. 613}

Thus far as to the liability of the Servant to
third persons -

But the Servant in many cases is liable to
the master for injuries done to him - Thus he is reg-
ularly liable for all willful wrongs and negligences
by which the master is injured - as where the Servant
was entrusted with the care of his master's cattle
and by negligence permitted them to starve to death,



or where he wilfully destroys his master's crops.

11 Mod 416
3 B & A 64

And upon the same principle if the Servant
lands goods which are debtible, before the duties
are paid or security given for the payment, so
that they become forfeited, it was held that the
Servant was liable to the master.

Ex. J. 265
11 Mod 109

But no action will lie ag. the Servant for mere breach
of orders when no damage is sustained. neither will
an action lie ag. him for insolence or misbehaviour,
these are grounds of correction.

1 Sid 298
3 B & A 4

But if the Servant disobeys any lawful com-
mand of the master and any damage ensues in
consequence of it, the master may have an action.

12 Co 188
1 Sid 298
Morr 249
2 H & L 85

and the rule is the same where there is a neglect of
duty on the part of the Servant and a consequent
damage sustained by the master, tho there is no
express command, as if an attorney neglect the
cause of his client.

2 Wils 325
1 Burr 706
Esp 207

But for the purpose of ascertaining what is
negligence or neglect of duty in respect to the Servant
the general rule is that the Servant implicitly under-



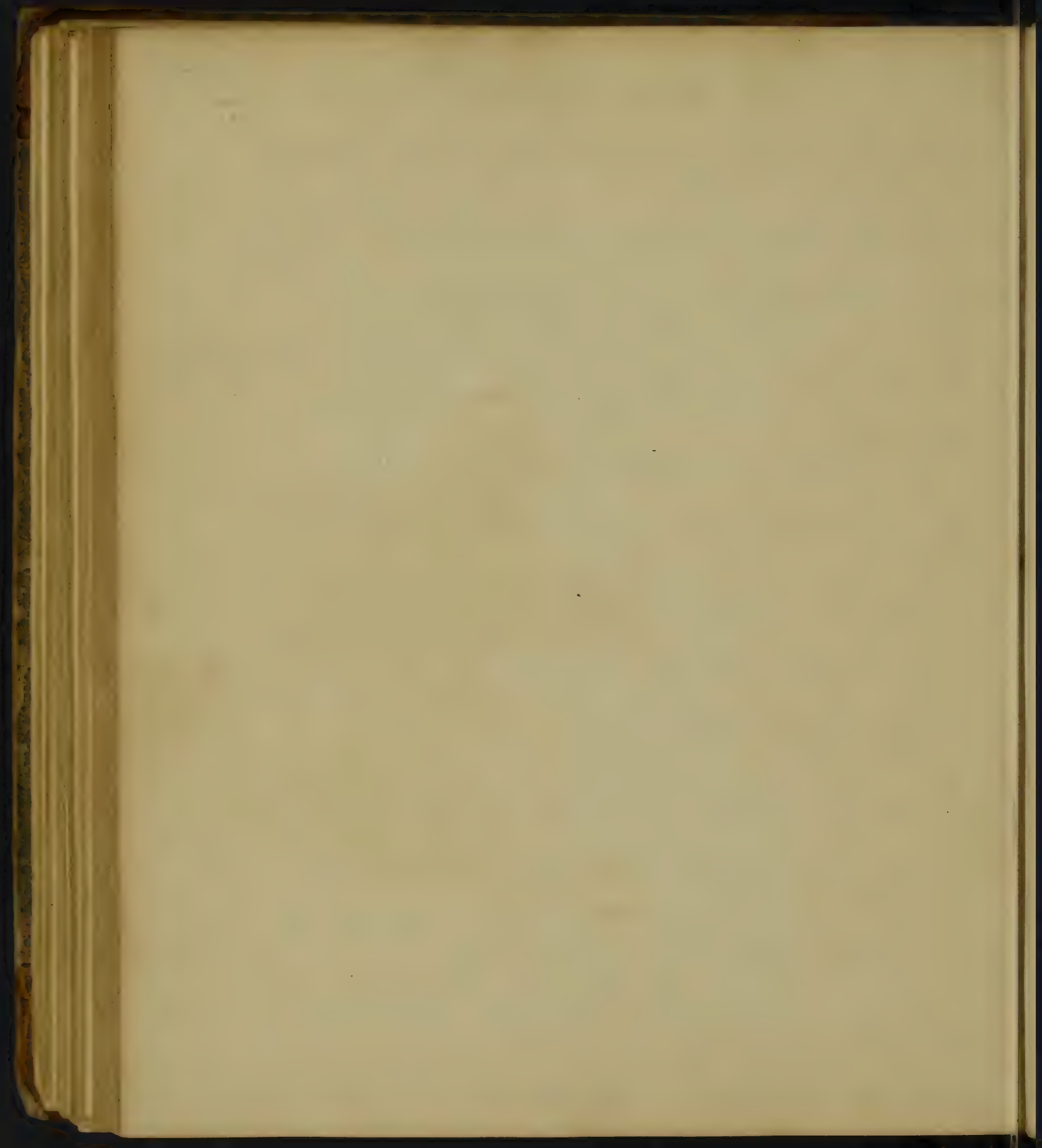
labour, for diligence and fidelity, and not regularly for strength and skill, and hence the Servant is not liable for losses occasioned by want of skill or strength. In to execute the commands of the master today requires more skill or strength than the Servant has, ^{10 Mod. 109.} but diligence and fidelity are presumed to be in his power. ^{3 B. & C. 64.}

Suppose a mechanic employs a journeyman and gives him wages &c. all necessary skills will be presumed to be exercised by him in his profession, and for a breach of such implied engagement, says ^{10 Mod. 109.} 10 Mod. 109. such journeyman would be liable to his master or Employer.

But the Servant is not liable for his master's goods when occasioned by robbery, but if he should wilfully expose them he would be liable. ^{3 B. & C. 54.}

The Servant is not liable for losses occasioned by inevitable accident as by lightning &c. ^{10 Mod. 109.}

And as the Servant is liable to the master for any act immediately injurious to the master. So in general the Servant is liable over to the master, where



The master has been subjected to an injury to a third person, occasioned by the negligence of the servant.

If the misconduct of the servant has subjected the master to loss, it follows that the servant must indemnify the master.

11th 1893
10 mod. 189

This rule however does not apply to cases where the master is actually a party to the wrong done; in this case they are joint tort-feasors, for in tort, each joint tort-feasor is liable for the whole wrong, one defendant cannot maintain an action against his co-defendant, for his contribution of the damages recovered, this is a rule of policy & not of principle.

11th 1894
8 J.R. 156

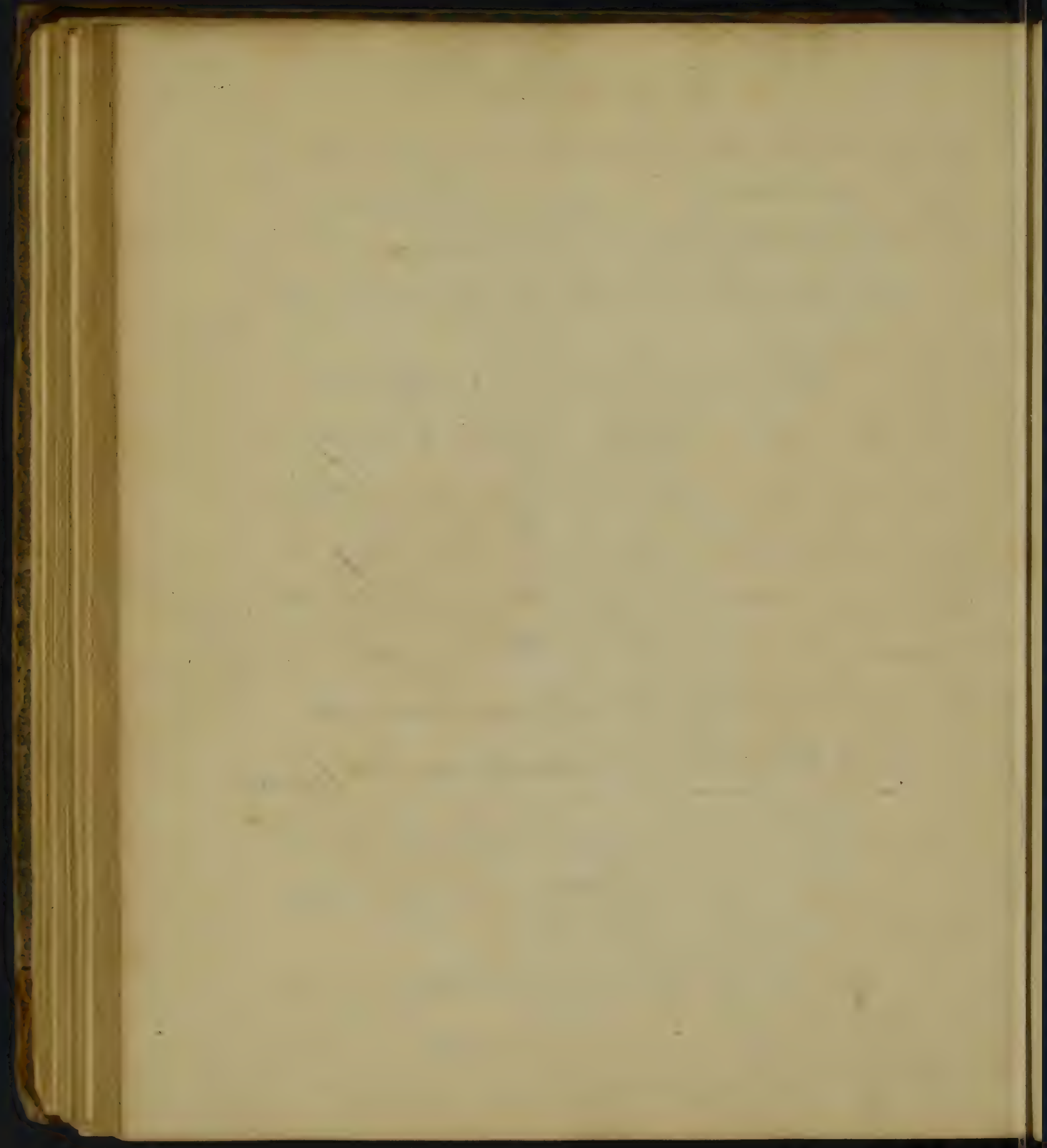
Kelly 116

As to the master's authority over his servants.

The master has by law a right to chastise his servant for any breach or neglect of duty - as for disobedience, insolence or ill manners &c.

This right of the master is nothing more than a right necessarily incident to the relation - it is an authority which every paternal family has a right to.

10 mod. 141
18
10 mod. 179
10 mod. 175
117



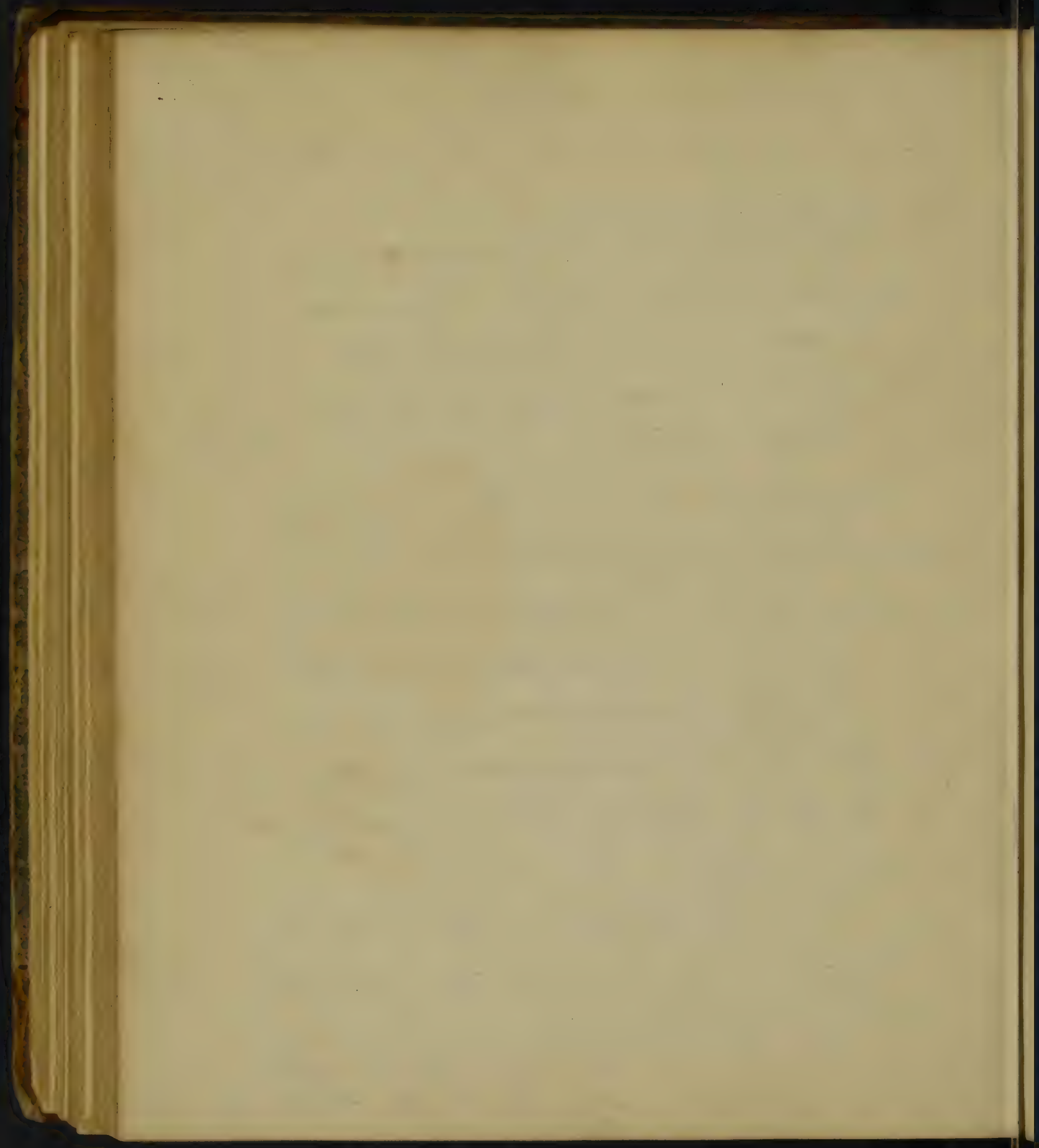
exercise no action can be maintained in these cases against servant—

But this correction to be justifiable must be reasonable—It must be in some measure disciplinary with the master as to the severity of it.

This rule obtains between a Schoolmaster and his Scholars, he has a right to correct them—

But this general rule cannot apply to every species of servants, and says Mr. Gould it seems somewhat remarkable, that the Elementary writers should lay down such general rules without discriminating between the several classes of servants to which they will apply. This rule as to chastisement cannot apply to the 3rd class viz agents there is no right of correction as to them.

And as to Day-laborers I should doubt says Mr. Gould whether the master has a right of correction. It is certainly not practised in this country and I have no idea that they possess the right any more than the employer of a Day-laborer, or of a

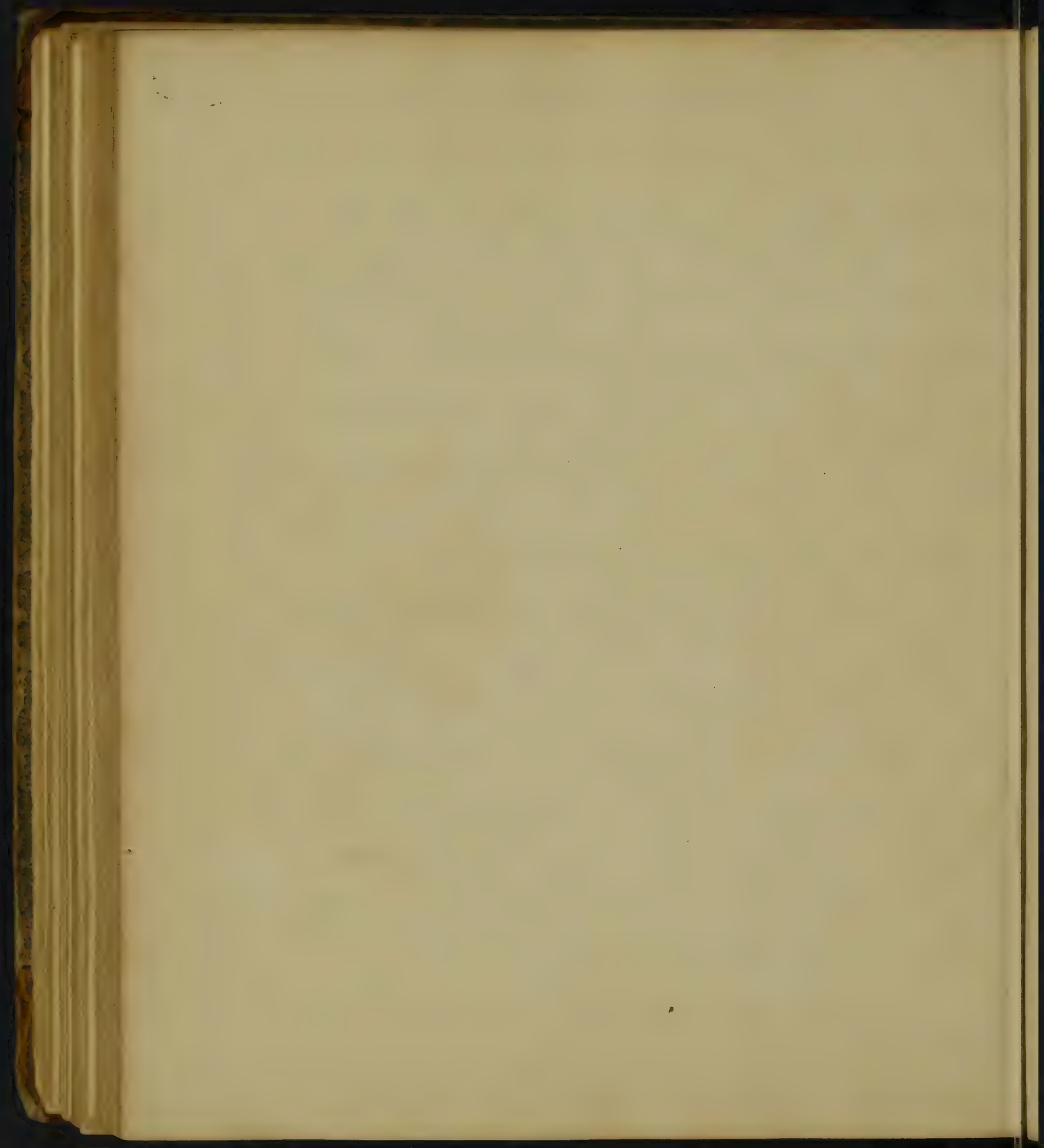


Blacksmith. I apprehend, says, that this rule relating to the master's right of correction extends only to those servants who belong to the master's family -- such as are under his personal control. It will apply to slaves, married servants, and apprentices and I think it will apply to those sent away by the year, but I should have some doubt as to this. But this rule does not extend to all who live in the family as labourers &c.

In Court the master may correct his debtor assigned in service, for he is a species of apprentice.

But the master has a right to correct, ^{he} if ^{he} beats ^a servant of free age, other than slaves and apprentices. It is said this is good cause for departure. However says, Mr. G., I think this cannot extend to married servants, It may apply, 1 B. & C. 128
11, 12, 168 to labourers by the day, month, year &c.

This correction must be reasonable. Hence it is said a master cannot justify a wounding. A distinction is to be made between a wounding, and



and a battery - every hurt is a battery, but every
hurt is not a wounding, -- wounding always means
some laceration or hurt which occasions a con-
fusion, and when done by the master is deemed to
be unreasonable. Hence in an action of assault
and battery ^{and wounding} by the master, he pleads a wounding
for disobedience, his justification - he should plead
the just cause as to the wounding, and then a battery
may be justified by plea of disobedience.

2 mod 167
8 ac 190,
330, 218

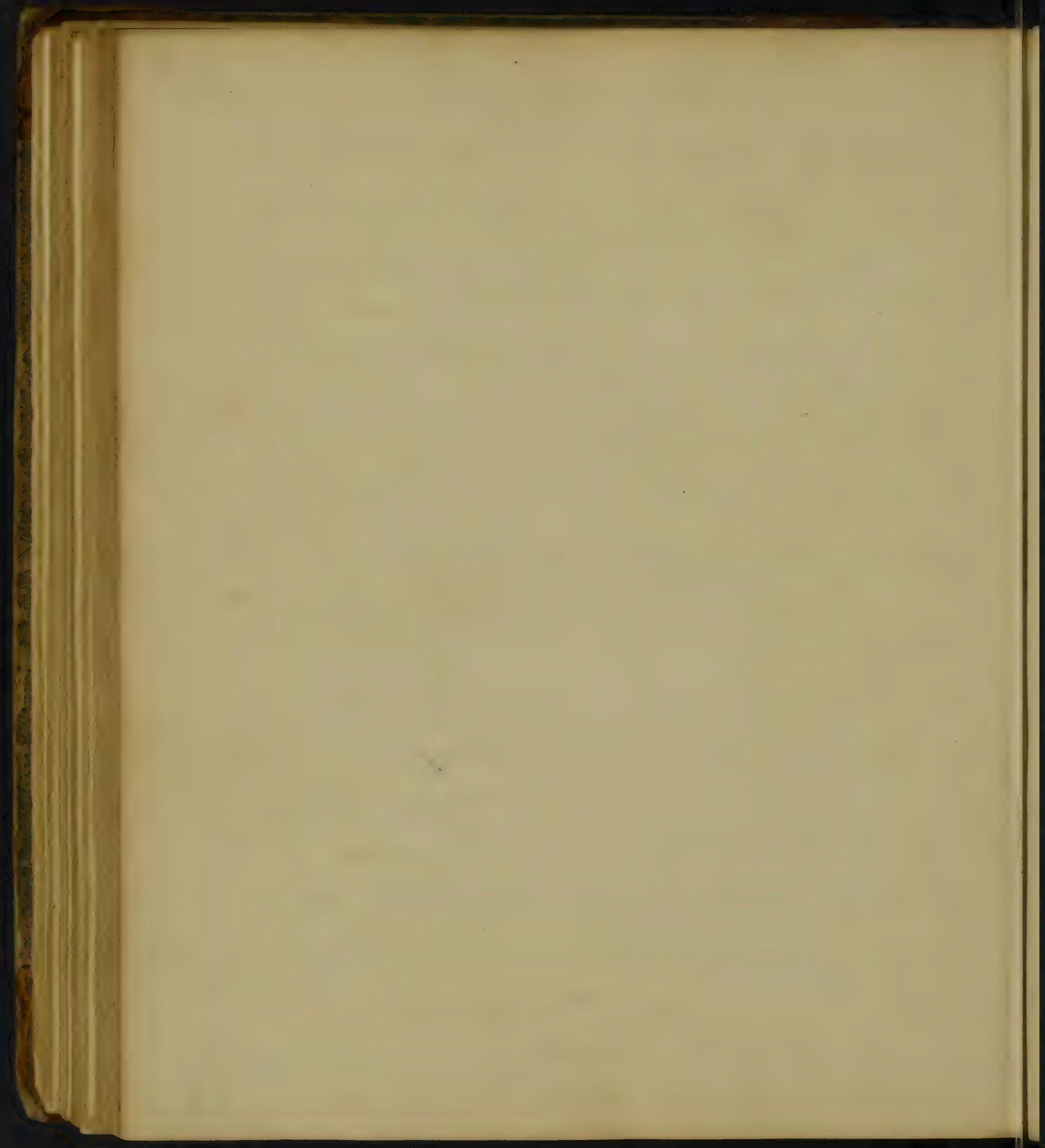
and by the Stat 4 & 5 of Anne when the
master is sued for beating his servant, he is al-
lowed to plead double i.e. not guilty, to the whole,
and justify as to part of the trespass.

When a master would justify for a battery
upon his servant, he must state the retainer i.e.
the contract, to show that he is his servant, the
place where, and the business in which he was em-
ployed, these all being matters of fact.

12071.

The master cannot delegate his authority
to another to correct so because his authority is founded on

9 Co 76
today 315
L 62
reg 360



Journal at Law.

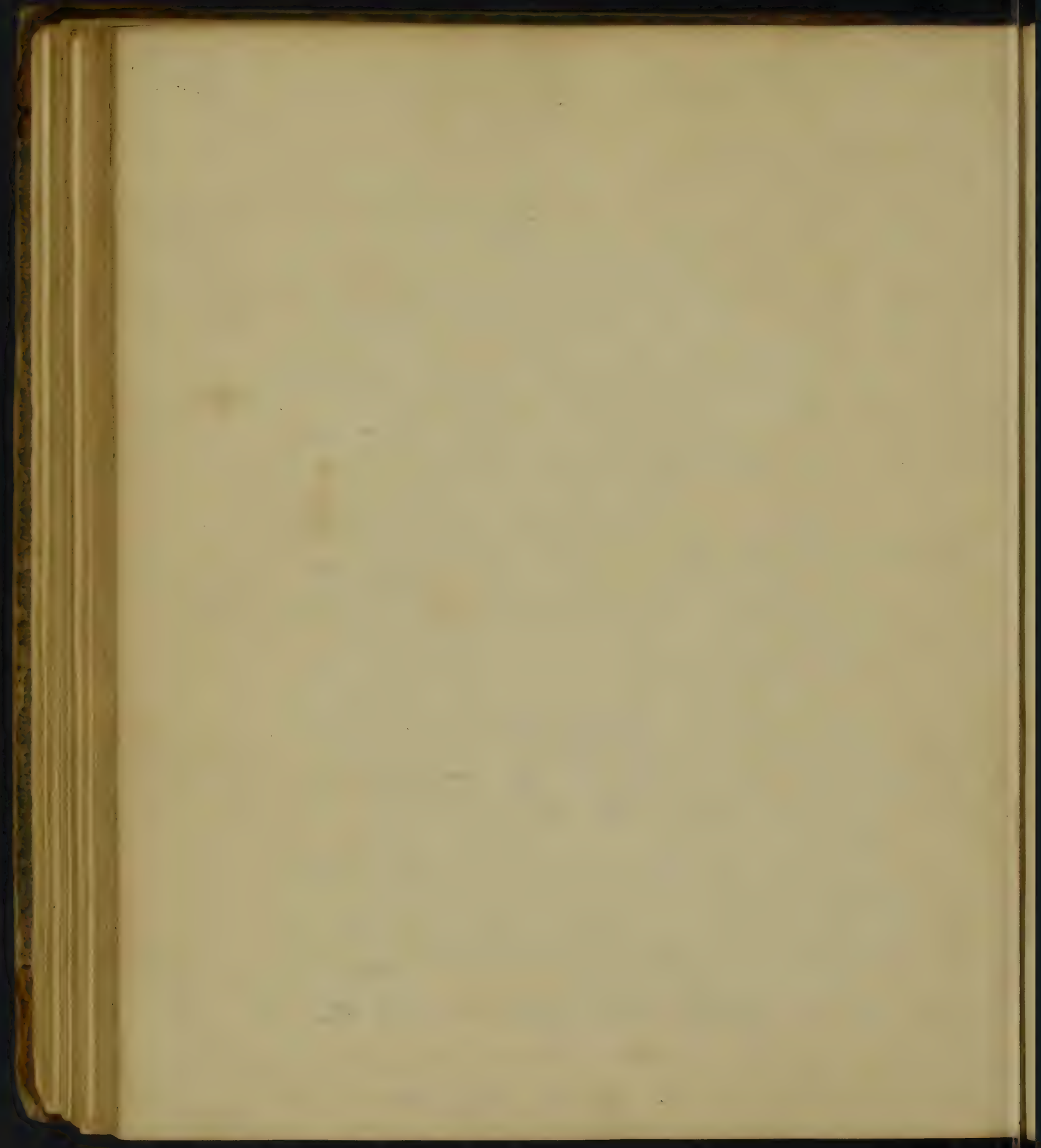
The 95th

If the master in committing his Servant kills ^{17th de 481}
him, he will be guilty of ¹⁷⁷³ ^{17th de 111} homicide, manslaughter ^{17th de 111}
or murder, according to the circumstances ^{17th de 111}
of the case.

As to the Servant may in certain cases place
himself in his master's stead as will be shown here-
after, it is a rule that the Servant cannot avoid
any debt given to a third person by plea of discharge
of the master, as if it be a debt to release the
master from prison, it cannot be avoided on ground ^{17th de 657}
of discharge of the master. ^{17th de 658}

As to the master's remedy against third per-
sons for damages sustained by himself in conse-
quence of an injury to the Servant.

In general the master has a right to recover
against third persons for any tortious act done to
the Servant in consequence of which he has sustained
a loss from the injury done to the Servant. Hence if ^{17th de 658}
one enters a way another's house the master may ^{17th de 658}
have an action ag. him for the loss of service. The



Master and Servant.

265-

action being laid with a per quod the action is
can, and the per quod is the gist of the action.

2 Day 1116
1 Wood 169

And if one's servant is forcibly taken away by an-
other the master may maintain an action off
happas with a per quod alleging special dama-
ges - and this is the proper form of action.

2 Day 1049
Salk 390
191
2 D. & 167

And if a servant without inticement leaves
his master's service and is employed by another, and
retained by him, knowing of the former retainer, an
action for loss of service will lie ag. the latter

master. But it is necessary in this case that the

1 Leo 63
109 10
106

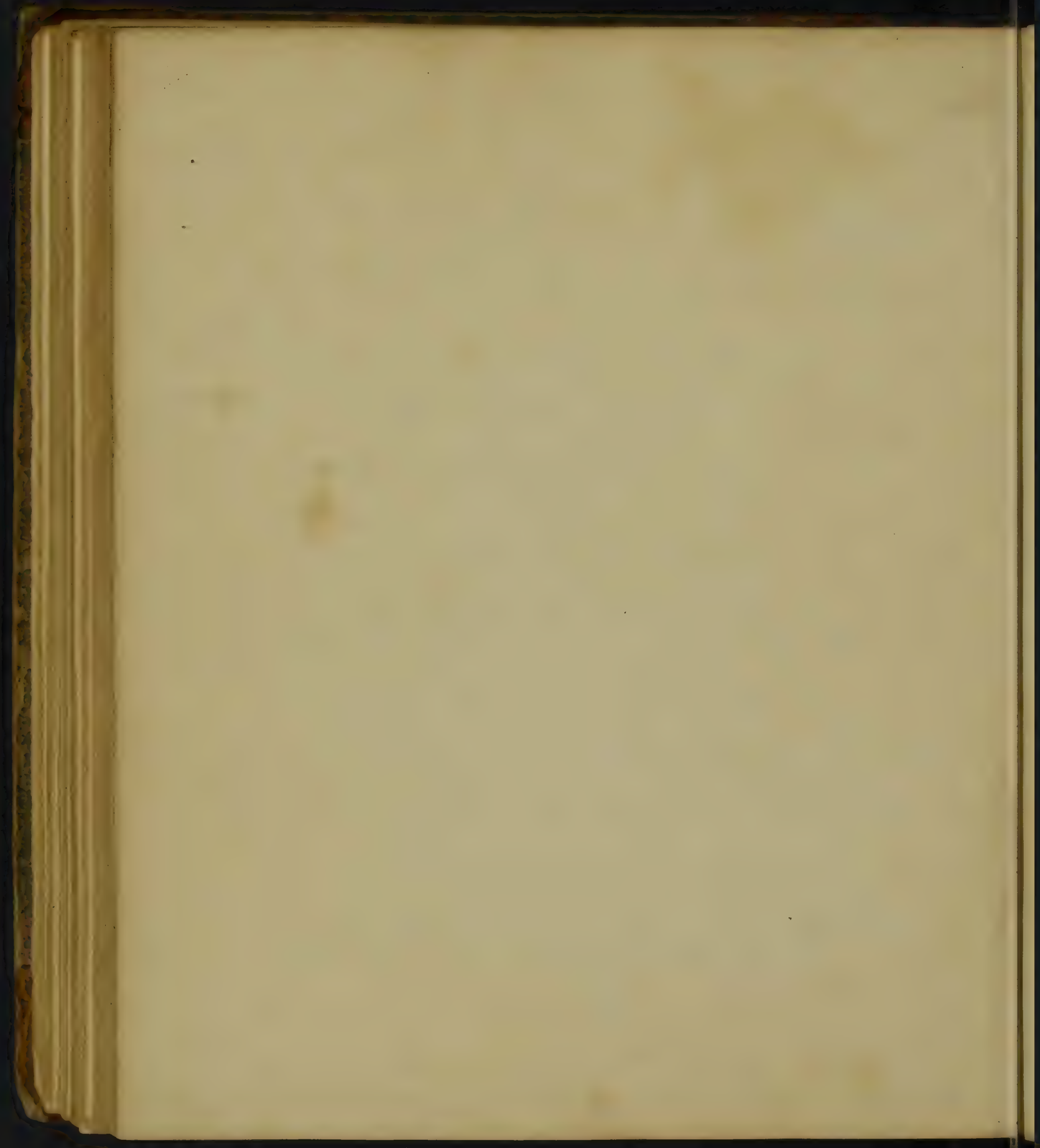
plaintiff show that the Defendant did know of the former re-

tainer. It is now settled that an indictment will
not lie ag. one for enticing away the servant of
another unless there is a forcible taking.

Salk 380
390 191

2 Day 1116

If a servant is beaten he and he only can main-
tain an action for the battery i.e. the servant, the in-
jury is a personal one, and the master has no right
in the action. But if loss of service is occasioned by
the battery, the master may have an action for this.



Hence a recovery by one is no bar to an action by the other in this case.

4. 2. 113
10. 2. 131
2. 2. 145
1. 2. 175

But in this case the master must declare with a prayer for without this the declaration will be immaterial loss of service must also be actually proved or the action will fail.

10. 2. 131
4. 2. 113
2. 2. 145
1. 2. 175

A minor child is a servant within these rules, and an adult-child in the same way be. A minor child is a servant within these rules, and even a child of course a servant of his Father - as the Father is bound to support and educate his child, so he has a right to his service while a minor. If then his minor child has been beaten he may recover for loss of service, not on the ground of the relation of Parent and child but of master and servant.

On this principle a parent or one standing in loco parentis may have an action for debauching his daughter. This action also arises out of the relation of master and servant, and not of Parent and child, and loss of service must be alleged as the ground of the action, but this is by no means the



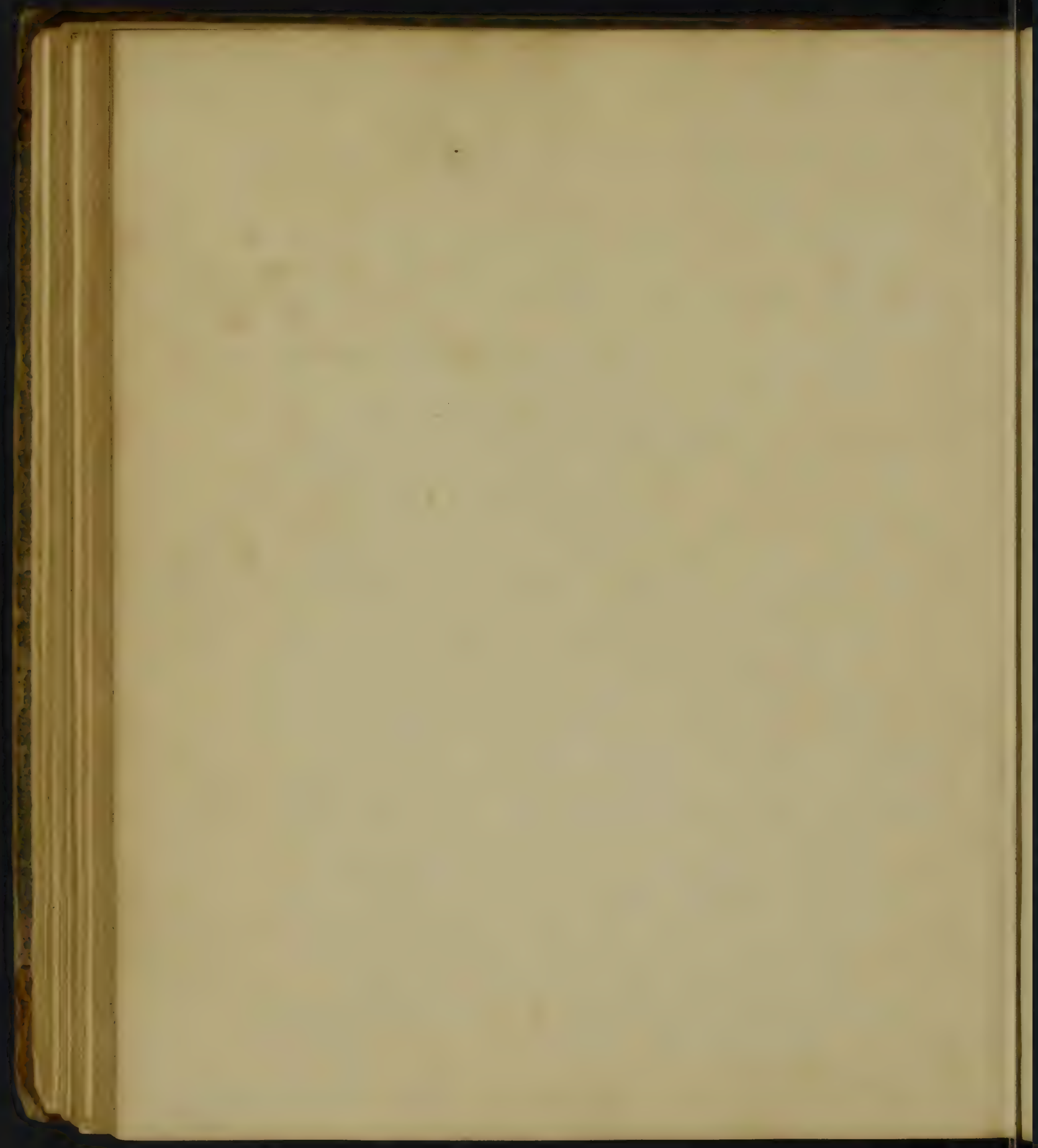
only rule of damages, to the ground of damages in the relation of Parent and child.

If one beats another servant in such a manner that the servant dies, the master has no remedy, for the civil injury is merged in the public wrong. And as person and property are both forfeited to the public, there is nothing left to satisfy the injured party.

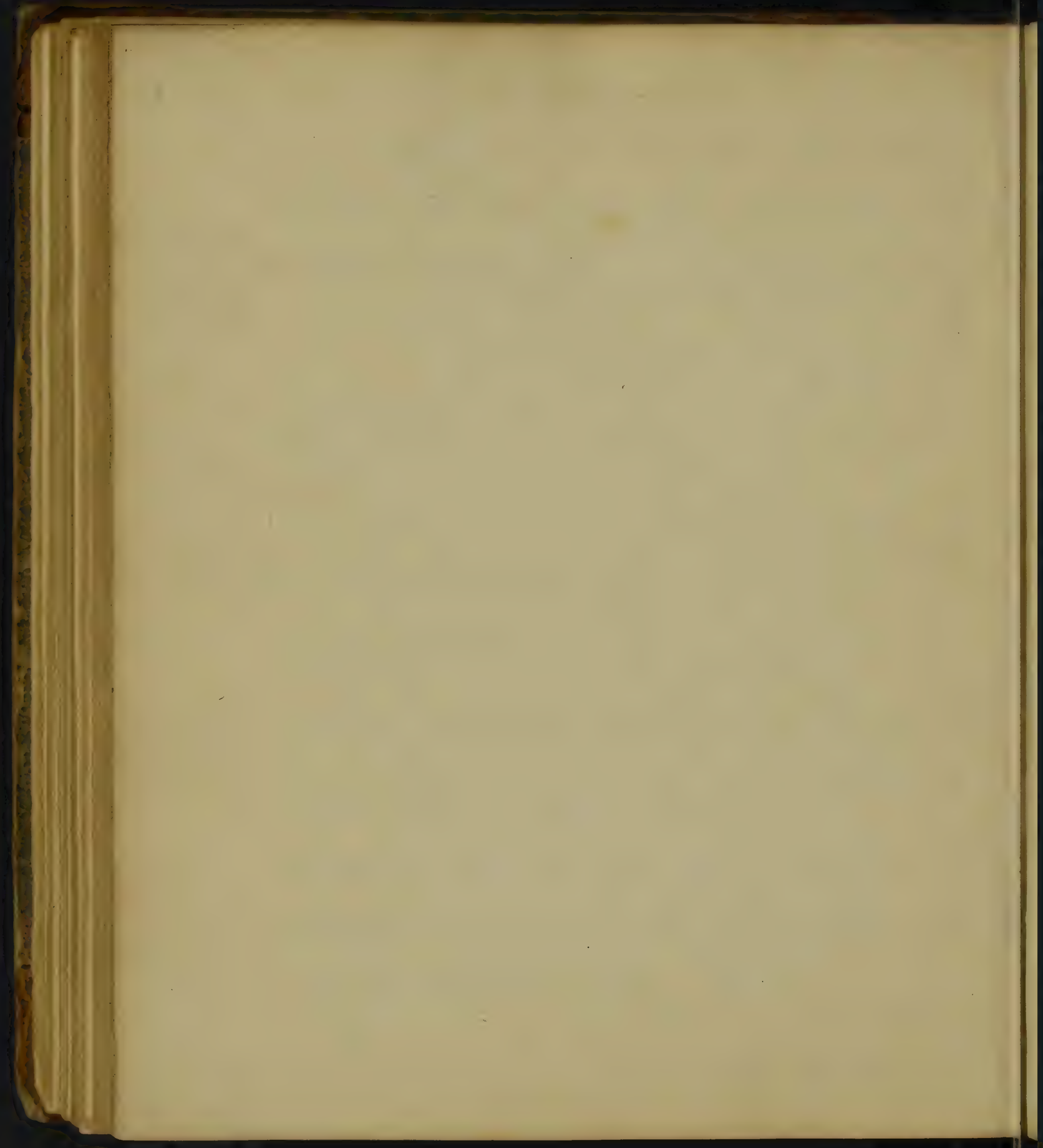
But in this State where the offender's property is not forfeited, it is reasonable to conclude that a civil remedy remains to the injured party - i.e. to the master - because means of redress are left.

If a Surgeon employed to cure the wound of one's servant, injures it by improper treatment, so that the master loses his service by reason of such treatment, the master may have his action *per quod* good reasons against the Surgeon.

But some will say that it nowhere laid down that if the injury is occasioned by the negligence or want of skill of the Surgeon, the master may have his action *per quod*. The rule laid down is that if he willfully injures so. I am therefore inclined to think

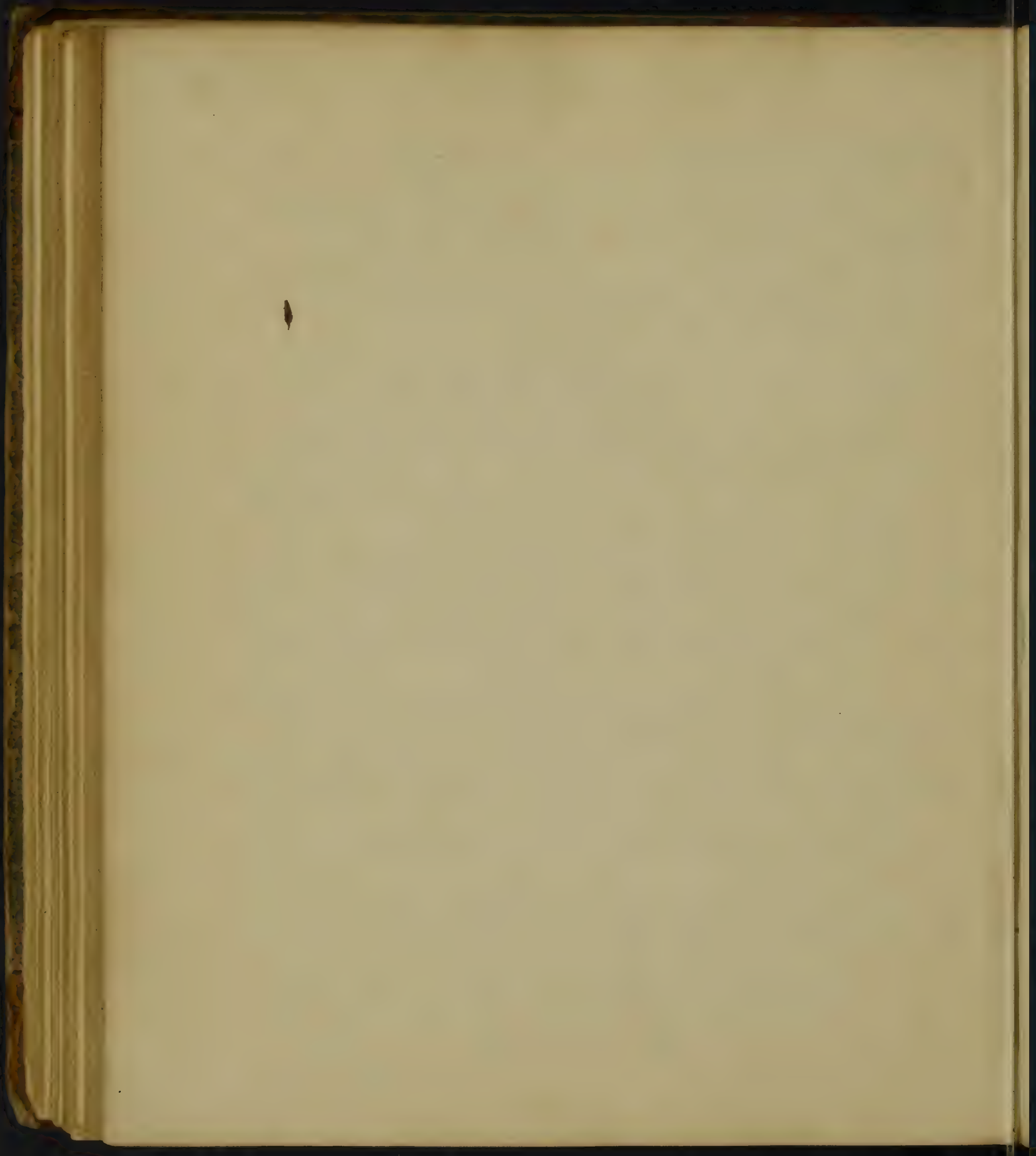


that the action will not lie in favour of the master, when there is an injury done to the Servant in consequence of negligence or unskillfulness of the Surgeon; ^{Ex p. 601} ^{Ex p. 221} ^{2 Ld. 359} ¹⁸⁴⁴ ¹⁸⁴⁵ ¹⁸⁴⁶ ¹⁸⁴⁷ ¹⁸⁴⁸ ¹⁸⁴⁹ ¹⁸⁵⁰ ¹⁸⁵¹ ¹⁸⁵² ¹⁸⁵³ ¹⁸⁵⁴ ¹⁸⁵⁵ ¹⁸⁵⁶ ¹⁸⁵⁷ ¹⁸⁵⁸ ¹⁸⁵⁹ ¹⁸⁶⁰ ¹⁸⁶¹ ¹⁸⁶² ¹⁸⁶³ ¹⁸⁶⁴ ¹⁸⁶⁵ ¹⁸⁶⁶ ¹⁸⁶⁷ ¹⁸⁶⁸ ¹⁸⁶⁹ ¹⁸⁷⁰ ¹⁸⁷¹ ¹⁸⁷² ¹⁸⁷³ ¹⁸⁷⁴ ¹⁸⁷⁵ ¹⁸⁷⁶ ¹⁸⁷⁷ ¹⁸⁷⁸ ¹⁸⁷⁹ ¹⁸⁸⁰ ¹⁸⁸¹ ¹⁸⁸² ¹⁸⁸³ ¹⁸⁸⁴ ¹⁸⁸⁵ ¹⁸⁸⁶ ¹⁸⁸⁷ ¹⁸⁸⁸ ¹⁸⁸⁹ ¹⁸⁹⁰ ¹⁸⁹¹ ¹⁸⁹² ¹⁸⁹³ ¹⁸⁹⁴ ¹⁸⁹⁵ ¹⁸⁹⁶ ¹⁸⁹⁷ ¹⁸⁹⁸ ¹⁸⁹⁹ ¹⁹⁰⁰ ¹⁹⁰¹ ¹⁹⁰² ¹⁹⁰³ ¹⁹⁰⁴ ¹⁹⁰⁵ ¹⁹⁰⁶ ¹⁹⁰⁷ ¹⁹⁰⁸ ¹⁹⁰⁹ ¹⁹¹⁰ ¹⁹¹¹ ¹⁹¹² ¹⁹¹³ ¹⁹¹⁴ ¹⁹¹⁵ ¹⁹¹⁶ ¹⁹¹⁷ ¹⁹¹⁸ ¹⁹¹⁹ ¹⁹²⁰ ¹⁹²¹ ¹⁹²² ¹⁹²³ ¹⁹²⁴ ¹⁹²⁵ ¹⁹²⁶ ¹⁹²⁷ ¹⁹²⁸ ¹⁹²⁹ ¹⁹³⁰ ¹⁹³¹ ¹⁹³² ¹⁹³³ ¹⁹³⁴ ¹⁹³⁵ ¹⁹³⁶ ¹⁹³⁷ ¹⁹³⁸ ¹⁹³⁹ ¹⁹⁴⁰ ¹⁹⁴¹ ¹⁹⁴² ¹⁹⁴³ ¹⁹⁴⁴ ¹⁹⁴⁵ ¹⁹⁴⁶ ¹⁹⁴⁷ ¹⁹⁴⁸ ¹⁹⁴⁹ ¹⁹⁵⁰ ¹⁹⁵¹ ¹⁹⁵² ¹⁹⁵³ ¹⁹⁵⁴ ¹⁹⁵⁵ ¹⁹⁵⁶ ¹⁹⁵⁷ ¹⁹⁵⁸ ¹⁹⁵⁹ ¹⁹⁶⁰ ¹⁹⁶¹ ¹⁹⁶² ¹⁹⁶³ ¹⁹⁶⁴ ¹⁹⁶⁵ ¹⁹⁶⁶ ¹⁹⁶⁷ ¹⁹⁶⁸ ¹⁹⁶⁹ ¹⁹⁷⁰ ¹⁹⁷¹ ¹⁹⁷² ¹⁹⁷³ ¹⁹⁷⁴ ¹⁹⁷⁵ ¹⁹⁷⁶ ¹⁹⁷⁷ ¹⁹⁷⁸ ¹⁹⁷⁹ ¹⁹⁸⁰ ¹⁹⁸¹ ¹⁹⁸² ¹⁹⁸³ ¹⁹⁸⁴ ¹⁹⁸⁵ ¹⁹⁸⁶ ¹⁹⁸⁷ ¹⁹⁸⁸ ¹⁹⁸⁹ ¹⁹⁹⁰ ¹⁹⁹¹ ¹⁹⁹² ¹⁹⁹³ ¹⁹⁹⁴ ¹⁹⁹⁵ ¹⁹⁹⁶ ¹⁹⁹⁷ ¹⁹⁹⁸ ¹⁹⁹⁹ ²⁰⁰⁰ ²⁰⁰¹ ²⁰⁰² ²⁰⁰³ 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joint and several obligors, not joint tortfeasors. The
 Servant is liable upon contract, and the Entire in-
 terest, in the case. However long off I am in-
 clined to think that a recovery ag the Servant will
 bar the action ag the entire where there is no satis-
 faction. It cannot be denied that the Servant par-
 ticipates in the wrong, by voluntarily going away.
 However think it doubtful on the other hand whether
 a recovery merely ag the entire will bar the action
 ag the Servant. Will damages for the inducement re-
 main the damage for the breach of contract between
 the master and Servant? It would seem appropriate
 that damages for breach of contract would
 repair the damage for enticing the Servant away.
 And from this consideration it would be reasonable
 to suppose a recovery ag the Entire would not
 bar the action ag the Servant. But no more than
 nominal damages would perhaps be recovered, this
 being a matter to be left to the jury.

As to those acts
 which the master and Servant may mutually



justly in each other's defence.

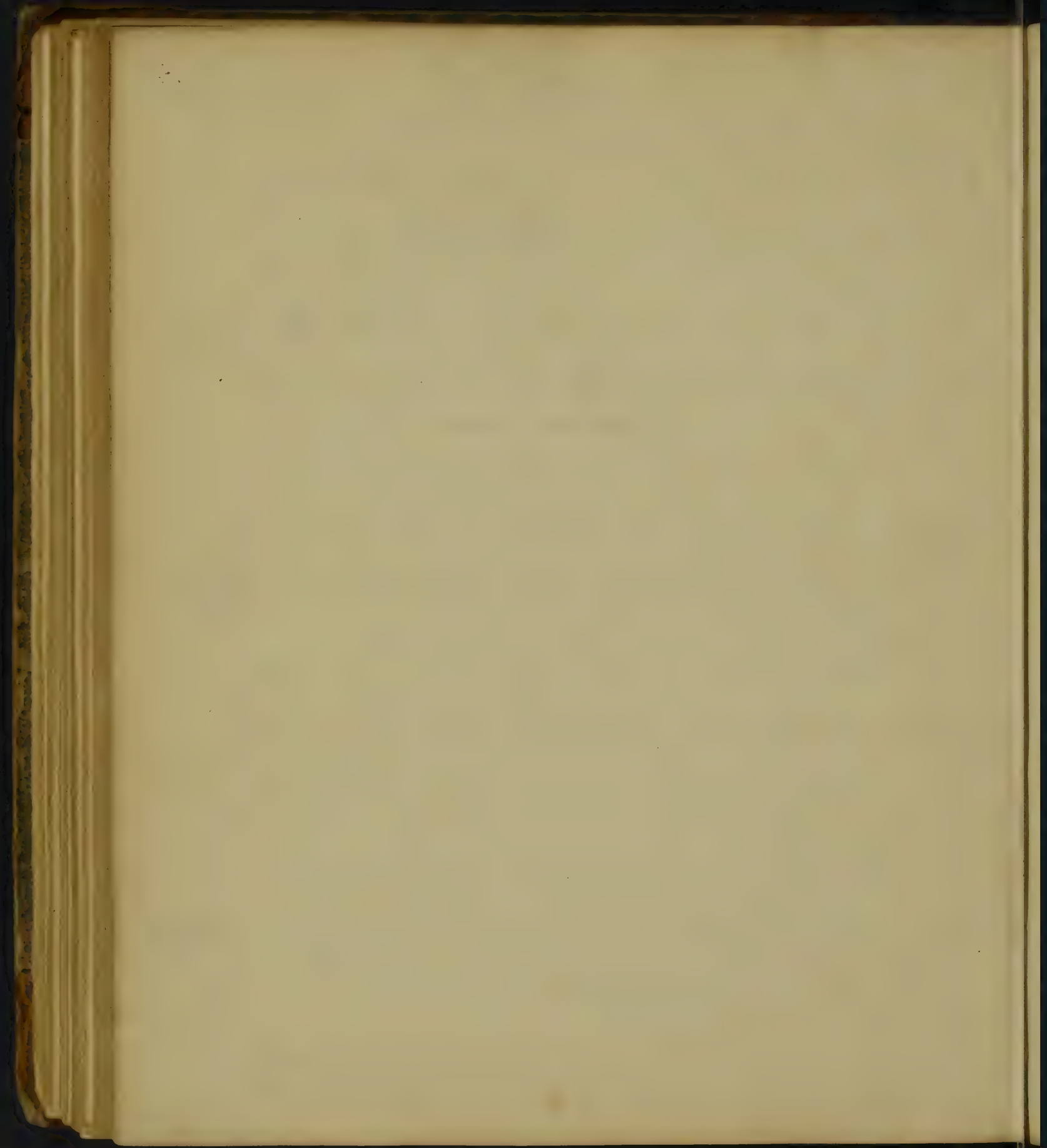
It is common law it is an offence called main-
tenance, for one to abet and assist another in main-
taining an action. But a master may assist his
servant and a servant his master in maintaining
a law suit and not be guilty of this offence, and this
is on the ground of the relation between them. ^{2 B. & A. 429}
^{2 B. & A. 135.}

A servant may also justify a battery in de-
fence of his master, and may use the same force ^{1 B. & A. 417}
which the master himself would have used, for ^{2 B. & A. 440}
he puts himself in the place of his master. ^{1 B. & A. 419}

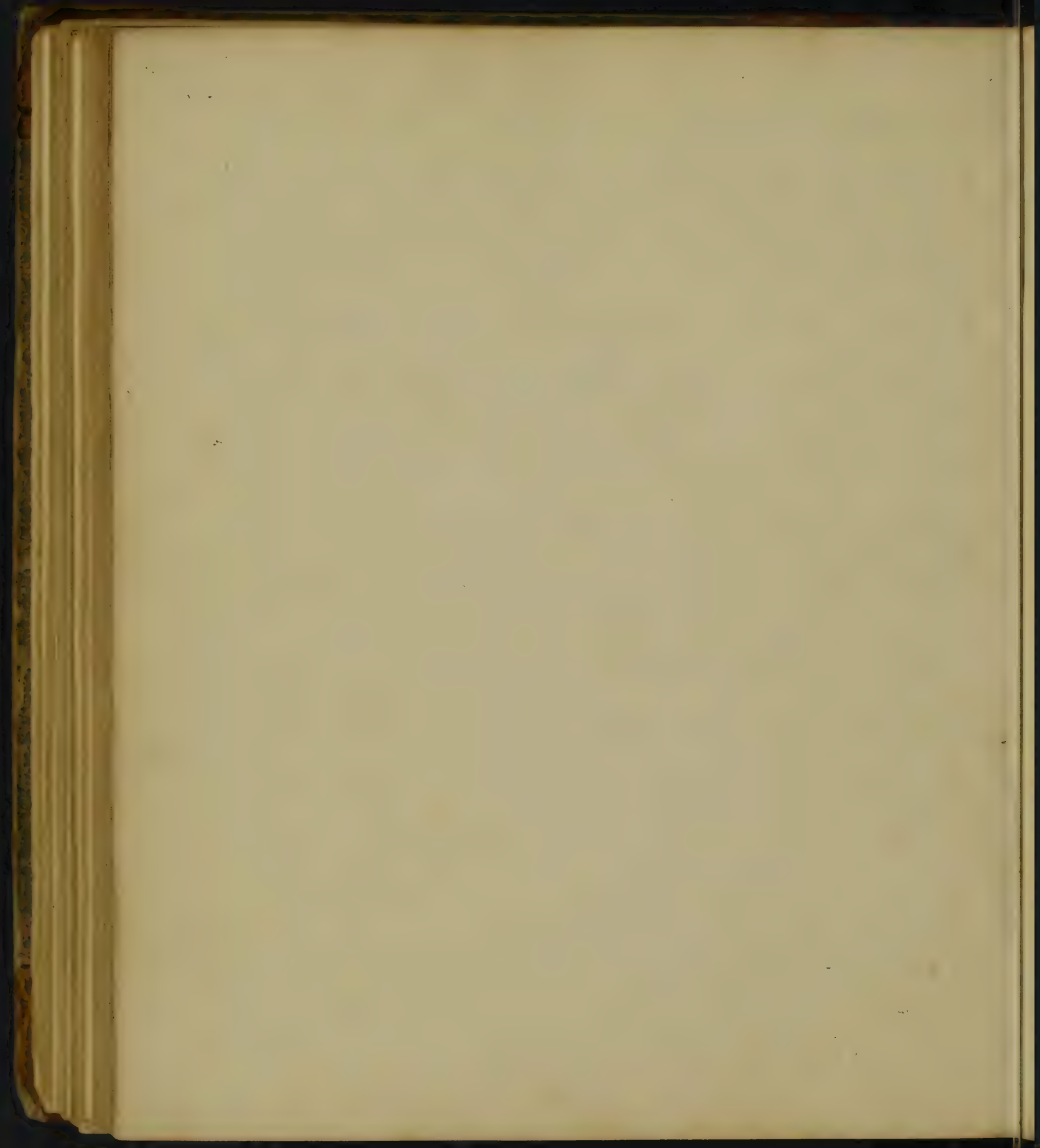
But a servant cannot justify a battery in defence
of his master's son or daughter or other servant, he
is a stranger as to them and therefore can only act
as a stranger, prevent a breach of the peace.

The servant may perhaps justify a battery in
defence of his master's wife, but he cannot in defence ^{2 B. & A. 451}
of his master's goods - his right extends only to the de-
fence of his master's person. ^{1 B. & A. 1}

Whether a master may justify
a battery in defence of his servant is a question not



get better. Those who advocate the negative say, the
woman has this remedy, by action for loss of service.



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